

*BOOKS Printed for Bernard Lintot and Henry Lintot, at the Cross Keys against St. Dunstan's Church in Fleetstreet.*

1. **M** R. Vernon's Cases in Chancery, 2 Vols. Folio.
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THE  
**LADY'S LAW:**  
K OR, A  
**TREATISE**  
OF  
**Feme Coverts:**  
 CONTAINING

All the **Laws** and **Statutes** relating  
 to **WOMEN**, under several **HEADS**:

VIZ.

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| <p>I. Of Discents of Lands to Females, Coparceners, &amp;c.</p> <p>II. Of Consummation of Marriage, stealing of Women, Rapes, Polygamy.</p> <p>III. Of the Laws of Procreation of Children; and of Bastards or spurious Issue.</p> <p>IV. Of the Privileges of <i>Feme Coverts</i>, and their Power with respect to their Husband, and all others.</p> <p>V. Of Husband and Wife, in what Actions they are to join.</p> | <p>VI. Of Estates Tail, Jointures and Settlements, real and personal in Women.</p> <p>VII. Of what the Wife is entitled to of the Husband's, and Things belonging to the Wife, the Husband gains Possession of by Marriage.</p> <p>VIII. Of Private Contracts by the Wife, Alimony, separate Maintenance, Divorces, Elopement, &amp;c.</p> |
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The SECOND EDITION.

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To which is added,  
 Judge HIDE's very remarkable Argument in the *Exchequer-Chamber*, Term. Trin. 15 Car. 2. In the Case of *Manby* and *Scot*, whether, and in what Cases, the Husband is bound by the Contract of his Wife:

And Select *Precedents* of *Conveyances* in all CASES concerning *Feme Coverts*.

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In the *S A V O Y*:

Printed by E. and R. NUTT, and R. GOSLING, (Assigns of E. Sayer, Esq;) for H. L. and Sold by C. CORBETT, at Addison's Head, and E. LITTLETON, at the Mitre, both against St. Dunstan's Church in Fleetstreet. 1737.

LADY LAW  
TREASURY



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THE  
PREFACE.

**W**HEN a Man and Woman are join'd in Matrimony, the Woman is called a Feme Covert, and the Law regards them but as one Person. And an ancient Author has assur'd us, that all Women, in the Eye of the Law, are either married or to be married; and their Desires are subject to their Husbands, as a Man shall forsake Father and Mother to stick to his Wife.

The



vi      The P R E F A C E.

*The Principal Causes of Matrimony are these two; Increase of Children, and the Avoiding of Fornication and Uncleanness; and whosoever marries for Beauty, Riches, or other Motives, rather than those before mentioned, are said to be guilty of a Crime, tho' it be not expressly disallow'd by our Law. And the Church of England is more strict in providing against the Change of Lust, and prohibiting Separations of Man and Wife, than the Roman Catholick Church; which in some Countries, indulges both the married Woman and the unmarried, in the full Exercise of their Lustful Pleasures.*

*As to the following Treatise it contains, besides the Law of Marriage, the Laws and Statutes concerning Women in general: But some Things of Entertainment, being writ long ago, are mix'd with  
the*

*the Law ; and our old Laws and Customs relating to Women, are many of them very merry, though the Makers of them might possibly be grave Men. The fair Sex are here inform'd, how to preserve their Lands, Goods, and most valuable Effects, from the Incroachments of any one ; to defend themselves and their Reputations against all unlawful Attacks of Mankind, and to maintain Actions, and carry on Prosecutions in Cases of Violation of their Persons, to the Death of a daring Offender.*

*Further, the Reader is to be acquainted, that this Work comprehends the Rights and Privileges of Females, as to Dissents, Partitions of Lands, &c. Estates-Tail affecting Them ; all the Laws relating to Rapes, Polygamy, and stealing of Women ; Judge Hide's learned Argument*  
in

viii The P R E F A C E.

*in the Exchequer Chamber, and  
select Precedents of Conveyances  
concerning Feme Coverts, not so  
much as mentioned in the Treatise  
called Baron and Feme; which 'tis  
hoped is sufficient to recommend it  
to all Practisers of the Law, and  
other curious Persons.*

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T H E

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A  
TREATISE  
OF  
**Feme Coverts:**  
OR, THE  
LADY'S LAW.

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*Of Females unmarried, and their  
Rights in Discents, Coparce-  
ners, &c.*

**B**Y our ancient Laws, Women have  
divers Ages to several Purposes ; as  
Seven Years for the Lord to have  
Aid ; the Age of Nine Years to de-  
serve Dower ; Twelve Years to consent to Mar-  
riage ; Fourteen to chuse a Guardian, and  
B One



2      **Of feme Coberts: ¶**

One and Twenty Years to alienate Lands, Goods and Chattles. *Co. Lit.* 78.

In Cases of Discent of Lands, a Female may sometimes be preferred in Succession before a Male: As for Example; Land is given to a Man, and the Heirs of his Body, who having Issue two Sons dies, the eldest Son dies also, leaving behind him a Daughter, this Daughter shall inherit by Right of Blood.

A Man is seised of Lands in Fee-simple, and hath Issue a Son and a Daughter by one Venter, and a Son by another Venter, and dies; whereupon the eldest Son enters and dies likewise, but without Issue, the Daughter shall have the Land, and not the younger Son; yet the younger Son is Heir to the Father, but not to the Brother. *Co. Lit.* 14.

And if a Man has Issue a Son and a Daughter by one Woman, and a Son by another; and the first Son makes a Purchase in Fee, and dies without Issue, the Sister shall have the Land by Discent, as Heir to her Brother, and not the younger Brother; for she is of the whole Blood of her elder Brother. *Ibid.*

But where there is a Son and a Daughter by one Venter, and a younger Son by another Venter, if the Father die seised of Lands, an Advowson, Rent, &c. and the eldest Son dies before Entry, or before he receives the Rent, the Daughter shall not inherit, but the younger Son, as Heir to the Father. *Co. Lit.* 11.

If a Man has Issue three Daughters by one Venter, and one Daughter by another Venter, and die seised, &c. they all enter, and

two of the Daughters by the first Venter die, the third Daughter, by the same Venter shall be Heir alone to their two Parts, and the fourth Daughter of the Half Blood gains Nothing therein. 10 *Affis.* p. 27.

There is a great Difference between Land purchas'd by him that died seised, and Lands descended to the same Person; for the first may go to the Heir on the Father's Side, and for Default of such to the Heir on the Side of the Mother; but Lands descended must always go to the Heirs of the Blood of the first Purchasor. *Co. Lit.* 12.

And the Case may be such, that a Female shall carry away Inheritance from a Male, though there be no Difference of Right Line, which *Bracton* calls *Jus sanguinis duplicatum*; as where a Man purchases Lands in Fee, and dies without Issue, an Aunt or Uncle's Daughter, on the Father's Side shall inherit before an Uncle or Uncle's Son, on the Mother's Side, where they are both Collateral, and the Relation of Blood is alike.

And if the Purchasor died leaving Issue a Son, and this Son dies without any Issue; now the Lands shall not go to the Heirs on the Part only of the Mother of the Son. To find out who shall inherit in this Case, we must ascend a Step higher to the Marriage of the Father and Mother of the first Purchasor; where if there be neither Brother nor Sister of the Purchasor, a Daughter of the eldest Uncle, on the Father's Side, may inherit before any of the Mother's Side; and such Daughter shall likewise be preferred before a Son of the second Uncle, on the Part

4      Of feme Coberts: ¶2,

of the Father, by the Worthiness of Blood.  
*Co. Lit.* 12.

Where there is a Brother and Sister, and Lands are let for Life to a Stranger, the Remainder to the Right Heirs of the Brother; and if he and the Tenant for Life die, the Sister may enter and retain the Possession and Fee, though the Brother's Wife be afterwards delivered of a Son: But a Remainder vested, is not like to Fee-simple descended to a Daughter, where a *posthumous* Son may enter. 30 *Affis.* p. 47. If a Man dies Seised of Land, and his Daughter enters, a Son born afterwards may enter; it is otherwise in Case of Purchase, &c. *Co. Lit.*

In the Case of *Wimbish* and *Talbois*, Chief Justice *Mountague* gave his Opinion, That if a Man devise Land for Life, the Remainder to the Right Heir Male of the Devisor, and the Heirs of his Body, &c. now if the Devisee for Life die, and a Woman, which is Heir general to the Devisor enters, and has afterwards a Son, the Son shall never out the Mother, in whom is vested the Inheritance, for want of other Persons to take the falling Remainder. 9 *H.* 6.

But if a Man, seised by Discent from his Mother, make a Feoffment with Condition, &c. and die without Issue; if a Woman, Heir on the Father's Side, enter for the Condition broken, an Heir, Male or Female, on the Mother's Side, may oust her. *Plow.* 56.

As where Lands are given to a Man, and the Heirs Males of his Body begotten, in this Case his Issue Male shall inherit, and the Issue Female shall never inherit; so if Lands  
or

or Tenements are given to a Man, and to his Heirs Females of his Body begotten, there his Issue Female shall inherit by Force of the said Gift, and not his Issue Male; for the Will of the Donor ought to be observed. *Co. Lit. 24.*

When a Gift in Tail is made to a Man and the Heirs Females of his Body, and he hath Issue a Son, who has Issue a Daughter, this Daughter shall never inherit; because she must convey by Discent from Females. Also if Lands be given to a Man, and the Heirs Male of his Body, and he hath Issue a Daughter, who has Issue a Son, and dies, and after the Donee dies, in this Case the Son of the Daughter shall not inherit by Force of the Entail; for the Heir Male must convey his Discent whole by the Heirs Males. *Co. Lit. 25.*

A Man gives Lands to another, and the Heirs Females of his Body, and dies, having Issue a Son and a Daughter, the Daughter shall inherit; but in Case of a Purchase it is otherwise. For if a Man have Issue a Son and a Daughter, and a Lease for Life be made, the Remainder to the Heirs Females of his Body, and he dieth, the Female can take nothing, because she is not Heir; for she must be both Heir and Heir Female, which she is not, the Brother being Heir; and because here is no Gift, therefore the Will of the Giver cannot be observed. *Co. Lit. 24.*

And so it is, if a Man hath a Son and a Daughter, and dies, and Lands be given to the Daughter, and the Heirs Female of the Body of her Father, the Daughter shall take nothing but an Estate for Life, because there



is no fuch Perfon, ſhe being not Heir. But where a Gift is made to a Man, and to the Heirs Female of his Body, there the Donee, being the firſt Taker, is capable by Purchase, and the Heir Female by Diſcent, *ſecundum formam Doni*. Co Lit. 25.

If a Man gives Land to one in Marriage with his Daughter, to hold to them two and the Heirs of their Bodies, they have Iſſue a Daughter, and the Husband dying, the Wife takes another Husband, by whom ſhe has a Son, and dies, the Daughter ſhall inherit *per modum Donationis*. This is an Example given by *Bracton*, with Relation to his general Rule, That a Woman ſhall not inherit when there is an Heir Male, *niſi contrarium faciat modus Donationis*.

When Lands are given to a Man, and the Heirs Males of his Body, who has Iſſue two Sons, and the Eldeſt dies, having Iſſue a Daughter; if he Leaſe the Land for a Term of Years, the Reverſion deſcends to the Son; but if the Leaſe be made for Term of the Life of the Leſſee, the Reverſion and the Fee-ſimple deſcend to the Daughter, the Diſcontinuance is the Cauſe thereof; and here the Daughter is not in, in the *per*, but *contra modum Donationis*, by violating the Will of the Donor. *Lit.*

If a Man give Landſ to a Perſon, and the Heirs Male of his Body begotten; Remainder to him and his Heirs Females on his Body begotten; the Donee has Iſſue a Son, who hath Iſſue a Daughter, and this Daughter has Iſſue a Son, this Son is not inheritable to either of theſe Eſtates-Tail, for the  
Reaſons

Reasons already mentioned, That the Male must make his Conveyance only by Males, and the Female by Females; but in this Case the Land shall revert to the Donor. And therefore the safest Way, when a Man designs to intail his Lands to the Heirs Males and Females of his Body, is to limit the first Estate to him and the Heirs Males of his Body, the Remainder to him and to the Heirs of his Body, and then all his Issues whatsoever are inheritable. *Co. Lit. 25.*

*John de Mandevile*, by his Wife *Roberge*, had Issue *Robert* and *Maud*; and *Michael de Morevil* gave certain Lands to *Roberge*, and to the Heirs of *John de Mandevile*, her late Husband, on her Body begotten; it was adjudg'd that *Roberge* had but an Estate for Life, and the Fee-tail vested in *Robert*; and that when he died without Issue, *Maud* the Daughter was Tenant in Tail, as Heir of the Body of her Father, *per formam Doni*; and the *Formedon* which she brought, supposed, That after the Death of the aforesaid *Roberge* and *Robert*, Son and Heir of the said *John de Mandevile*, and Heir of the said *John*, begotten on the Body of the said *Roberge*, to the said *Maud*, Daughter of the said *John*, begotten on the said *Roberge*, Sister and Heir of the said *Robert*, the said Lands ought to descend, *per formam Donationis predictæ*. And yet in Truth, the Land did not descend unto her from *Robert*; but because she could bring no other Writ, it was held good.

In this Case, although *Robert* being Heir, took an Estate-Tail by Purchase, and the Daughter was no Heir of the Body of the

## 8 Of Feme Coverts: Or,

Father, at the Time of the Gift, she recovered the Land *per formam Doni*, by the Name of Heir of the Body of her Father; which notwithstanding her Brother was, and he was capable at the Time of the Gift; and therefore when the Gift was made, she took nothing, but in Expectancy when she became Heir, *per formam Doni*. Co. Lit. 26.

If a Man hath Issue two Daughters, and dies seised of two Acres of Land in Fee-simple, and one Sister gives her Part to the other Sister, and the Heirs of the Body of her Father, here the Donee has an Estate-Tail in the Moiety of the Donor's Part; for the Donee is not the entire Heir, but the Donor is Heir with the Donee, and she cannot give to the Heirs of her own Body; and the Donee has the other Moiety of her Sister's Part for Life. Co. Lit. 26.

When there is no Heir Male to an Estate in Fee-simple, &c. but several Females, either Daughters, Sisters, &c. they are called *Parceners*, and shall inherit together. Co Lit. 163.

And although they are several Persons, yet are they but one Heir, and they have one entire Freehold in the Land, as long as it remains undivided, in Respect of any Strangers, but between themselves, they have in Judgment of Law, several Freeholds to many Purposes; as one of them may execute a Conveyance of her Part to the other, &c.

By the Death of any one of them, the Coparcency is not sever'd; for in such Case, the Part of the Person dying shall descend to her Issue; but the Issues of several Coparceners shall never join as Heirs to their Mothers,

thers, because several Rights descend ; and yet when they have recovered, a Writ of Partition lies between them. *Co. Lit.* 164.

If the Issues of two Coparceners, who are in by several Descents, be disseised, they shall join in Assise ; though in this Case, if the two Daughters had been actually seised, and afterwards disseised, after their Deceases the Issues shall not join ; because several Rights descend to them from several Ancestors ; but after they have severally recovered, they are Coparceners, and one *Præcipe* lies against them. *Ibid.*

A Man hath Issue two Daughters, and the eldest Daughter hath Issue three Daughters, and the youngest one Daughter, all these four shall inherit ; but the Daughter of the Youngest shall have as much as the three Daughters of the Eldest, *Ratione stirpium*, and not *Ratione capitum* ; for in Judgment of Law, every Daughter hath a several Stock or Root. *Co. Lit.* 164.

Also if a Man has Issue two Daughters, and the Eldest has Issue divers Sons and divers Daughters, and the Youngest hath Issue several Daughters, the eldest Son of the eldest Daughter shall only inherit ; but all the Daughters of the Youngest shall inherit ; and the eldest Son is Coparcener with the Daughters of the youngest Daughter, and shall have one Moiety, *viz.* his Mother's Part ; so that Men descended of Daughters, may be Coparceners as well as Women, and shall jointly implead, and be impleaded. *Ibid.*



A Partition may be made of any Estate of Freehold, or for Term of Years, or at Will, of Manors, Lands, Tenements or Hereditaments, whereof the Partition is demanded. But if a Man have Estovers appendant to his Freehold, they are so entire that they shall not be divided between Coparceners; and if a Corody incertain be granted to a Man and his Heirs, and he hath Issue several Daughters, this Corody shall not be divided between them; but of a Corody certain Partition may be made. Homage and Fealty cannot be divided between Coparceners; and a Piscary incertain, or a Common *Sauns nombre*, cannot be divided.

In these Cases, the eldest Daughter shall have the Estovers, Common, Piscary, Corody incertain, &c. and the rest shall have Contribution; that is, an Allowance of the Value in some other Part of the Inheritance. And if the Common Ancestor left no other Inheritance, whereof Contribution may be had, then shall one Coparcener have the Estovers, Piscary, Common, &c. for one Time, and the others for the like Time; as the one for one Year, and the other for another, or a longer or shorter Space. Or in Case of the Piscary, one may have the first Fish, or first Draught, and the other the second, &c. And if it be of a Park, one may have the first Venison, and the second the second, &c. *Co. Lit. 165.*

A Rent-Charge is entire, but it may nevertheless be divided between Coparceners; and by Act in Law the Tenant of the Land is subject to several Distresses, and Partition  
may

may be made before Seisin of the Rent. Likewise an Advowson is an entire Inheritance, and yet in Effect the same may be divided between Coparceners; for they may so divide it, as to present by Turns. *Ibid.*

If Coparceners, Jointenants, &c. be seized of any Estate of Inheritance in the Advowson of any Church or Vicarage, or other Ecclesiastical Promotion, and a Partition be made between them to present by Turns; then every one shall be adjudged to be seized of his or her separate Part of the Advowson, to present in his or her Turn: As if there be two, and they make Partition, each shall be said to be seized; the one of the one Moiety to present in the first Turn, and the other of the other Moiety to present in the second Turn; and so where there are more than two. Stat. 7 *Annæ.*

If an Advowson descends to several Parceners, and they can't agree in the presenting to the same; the Law casts the first Presentation on the Eldest, and the Second shall have the second Turn, &c. every one in Turn according to *Seniority*. And if they enter into an Agreement to present by Turns, the Inheritance is not thereby divided; but in Case of a Usurpation by a Stranger, they may join in a *Quare Impedit*. 2 Part Co. Inst. 365.

Partition may be made several Ways: One is, when the Parceners agree amongst themselves to make Partition of the Lands, or Tenements. As if there be two Parceners, they consent to make a Division between them of the Tenements in two Parts; each  
Part

Part by it felf in Severality, and of equal Value: And if there be three Parceners to divide the Tenements into three Parts in Severality, &c. *Co. Lit.* 166.

Another Partition there is, (*viz.*) to chufe by Agreement certain of their Friends, to make Partition of the Lands or Tenements in Manner aforefaid. And then after Partition made, the eldeft Daughter fhall make the firft Choice of one of the Parts fo divided, which ſhe will have for her Part or Share; then the fecond Daughter next after her of another Part, and then the third Sister another Part, & *fic de cæteris*, unleſs it be otherwiſe agreed between them: For the Agreement may be made for one to have ſuch Tenements, and another ſuch Tenements, &c. without any *primer* Election.

But if the Parceners agree that the eldeft Sister fhall make Partition of the Tenements, and ſhe do it accordingly; then it is ſaid, that the eldeft Sister fhall chufe laſt for her Part, and after every one of her Sisters, &c. The Rule of Law is *Cujus eſt Diviſio, alterius eſt Electio*. And the Reason of this my Lord Coke tells us is to avoid Partiality,

*Ipfæ etenim Leges cupiunt ut jure regantur.*

which might apparently follow, if the Eldeſt were permitted both to divide and chufe.

There is another Partition made in the following Manner: After Diviſion made of the Lands, every Part of it is written in a ſmall Scroll of Parchment, and cover'd with Wax like to a little Ball, ſo as none may inſpect  
what

what is written on the Scrolls; and then the Balls of Wax, being three, or four, &c. are put in a Bag or Hat held by an indifferent Person, and the eldest Daughter shall first put her Hand into the Hat, and take a Ball of Wax, with the Scroll within the same Ball for her Part; and then the second Sister shall put her Hand in and take another; the third Sister, the third Ball, &c. And in this Case, every one of them must stand to their Chance and Allotment. *F. N. B.* 197.

If there be four Parceners, and they will not agree to a Partition to be made between them; then may one of them bring a Writ of *Partitio facienda* against the other three; or two of them may have this Writ against the other two; or three of them against the fourth at their Election. Upon this Writ Judgment shall be given that the Sheriff shall go to the Lands and Tenements, and by the Oaths of twelve Men, &c. make Partition between the Parties; and assign one Part of the Lands and Tenements to the Plaintiff, and another Part to another Parcener, &c. And here no Mention is made in the Judgment, of Preference to be given to the eldest Sister more than the youngest, but to make equal Partition. *Co. Lit.* 168.

In case there be three Parceners, and the youngest is for having a Partition, but the other two are for holding in Parcenary that which to them belongs without Partition, and will not agree with the youngest: Now if one Part be allotted in Severality to the youngest Sister, according to that which she ought to have; the others may hold the Remainder



mainder of the Lands in Parcenary, and occupy in Common without Partition if they will; and if afterwards the eldest or middle Parcener will make Partition between them, they may do it at their Pleasure. But where Partition is made by Writ *Partitio facienda*, there it is otherwise; for every Parcener shall have her Part in Séverality, &c. *Co. Lit.* 177.

*Bracton's* Partition, is where a Commission was issu'd to several Persons nominated by the Parties, or appointed by the King as Justices, with Commandment to the Sheriff to cause the Parceners to come before those Commissioners: And when the Division was made, every Part being written by it self was to be deliver'd to a Lay-man unlearn'd; who was to distribute to every Coheir her Part at Adventure, wherewith she should be satisfied: Tho' this might be altered by their Agreement amongst themselves, to elect according to the Prerogative of their Age. *Bract.*

The last Manner of Partifion is by Hotchpot: Which is where a Man seised of certain Lands in Fee-simple, hath issue two Daughters, and the eldest being married, the Father gives Part of his Lands to the Husband with his Daughter in Frank-Marriage; and dies seised of the Remainder, which Remainder is of greater Value than the Lands given in Marriage: In this Case, the Husband or Wife are to put their Lands given in Frank-Marriage in Hotchpot, with the Remainder of the Land, with the Wife's Sister. And if they will not condescend to this; then the youngest Sister may hold and enjoy the same Remainder,

Remainder, and take the Profits only to herself. *Co. Lit.* 175.

This Term Hotchpot signifies no more than the putting of the Lands in Frank-Marriage and the other Lands in Fee-simple together, to the Intent to know the Value of both, and then Partition shall be made as follows. If a Man be seised of thirty Acres of Land of equal Value *per Acre per Ann.* and hath Issue two Daughters, one whereof is Covert Baron, with whom the Father gives ten Acres in Marriage, and dieth seised of the Remainder; then the other Sister shall enter into the remaining twenty Acres, until the Husband and his Wife will put the ten Acres with the twenty Acres in Hotchpot, that the Value of every Acre may be known; and then on the Partition, the Husband and Wife shall be allotted, besides the ten Acres, five Acres in Severality of the twenty Acres, and the other Sister shall have the fifteen Acres remaining; so as the Husband and Wife may have as much in yearly Value as the other Sister. *Co. Litt.* 177.

If two Messuages descend to two Parceners, and one of them is worth 20 s. a Year, but the other is in Value no more than 10 s. *per Ann.* in this Case Partition may be made between them, by assigning one Messuage to one Parcener, and the other Parcener to have the other: And she who hath the Messuage worth 20 s. *per Ann.* and her Heirs, shall pay a yearly Rent of 5 s. issuing out of the same to the other Parcener, and to her Heirs for ever, because each of them are to have Equality in Value. *Co. Lit.* 169.

A Partition of Lands ought to be made according to the Quality and true Value of the Lands, and not according to the Quantity or equal Number of Acres. *Hill. 22 Car. B. R.* And if there be three Coparceners of a Manor who make Partition, every of them shall have a Manor and a Court-Baron within her Purparty. *Dav. Rep. 61.*

But if two Parceners of Land in Fee-simple, being of full Age (*viz.*) of twenty-one Years, make Partition between themselves, and the Part of one of them exceeds in Value the Part of the other, this Partition cannot be defeated. But if the partible Tenements are held in Fee-tail, and the Part of one is more in Value than the Part of the other, the Persons making the Partition are only concluded during their Lives; for if the Parcener which has the lesser Part leave behind her any Issue, such Issue may disagree to the Partition, and enter and occupy in common the other Part which was allotted her Aunt, &c. as if no Partition had been made. *Co. Lit. 170.*

And if Parceners being married, they and their Husbands make Partition, if the Part of the one be less in Value than the Part of the other, the Partition shall not be avoided during the Lives of their Husbands; but that Woman which has the lesser Part after the Decease of her Husband, may enter into her Sister's Part and defeat the Partition.

Partitions made where the youngest Coparcener is within Age, may be avoided by such youngest, if the Part allotted her be less in Value than the Part of the others; and she

she may, either during her Nonage, or at her full Age, enter into the Part assign'd her Sister, &c. but if she receives the Profits of the Lands allotted her at full Age, she confirms the Partition, and it may not be defeated.

So that tho' the Partition be unequal, yet the same is not void, but voidable by Entry, &c. But a Partition made by the King's Writ, *De Partitione facienda*, by the Sheriff on the Oaths of twelve Men, shall bind the Infant for ever, tho' his Part be unequal; and 'tis the same of Feme Coverts. *Co. Lit.* 171.

If there be two Parceners, and the one takes Husband, and the Husband and Wife have Issue between them, and then the Wife dies, and the Husband keeps himself in as Tenant by the Curtesy; in this Case the surviving Parcener and the Tenant by the Curtesy may make Partition between them. And if the Tenant by the Curtesy will not consent to make Partition, the Parcener which survives may compel him by Writ *De partitione facienda*, &c. But the Tenant by the Curtesy may not have this Writ to oblige a Partition, because he is no Parcener, and such Writs lie for Parceners only.

Partition of Lands of Inheritance by Parceners, Jointenants, &c. must be made by Writ or Deed, and cannot be made by Parol. *Dyer* 350. And when there are three or four Coparceners, who make Partition between them; if the Part of one Parcener be defeated, she may enter and occupy the other Lands with all the other Parceners, and compel them to make new Partition, &c. *Co. Lit.*



174. And where Part of one Parcener's Estate is evicted for Life; that shall defeat the entire Partition. 5 *Mod.* 141.

If a Man having Issue two Daughters, dies seized of Lands in Fee-simple, and Lands in Fee-tail, and the Daughters after his Decease make Partition between them, whereby the Fee-simple Lands are allotted the youngest Drughter, and the entail'd Lands assigned to the eldest; if after such Partition made, the youngest Daughter aliens her Land in Fee-simple to another in Fee, and dies, leaving behind her Issue a Son or a Daughter, the Issue may enter into the Lands in Tail, and occupy them in Purparty with the Aunt; for the Issue can have no Remedy for the Land sold by the Mother, it being in Fee-simple; and being Heir in Tail, and having no Recompence from the Lands entail'd, it is but reasonable he should have his Portion of those Lands, when the Partition makes no Discontinuance. *Co. Lit.* 172. But *Anno* 10 *H.* 6. it was adjudg'd that the Heir shall be put to a Writ of *Formedon*, and may not enter upon the Parcener.

And the Eldest Daughter shall not enter into half the Lands in Fee-simple upon the Alienee; for by the Alienation the Privity of Estate is destroy'd. It shall be accounted the Folly of the eldest Sister that she would agree to such a Partition; for if she had brought a Writ of Partition, she should not have been compell'd to take the whole Estate in Tail, by Reason of the Prejudice that might ensue, but should have challeng'd one Moiety of the Lands in Tail, and another  
Moiety

Moiety of the Fee-simple Lands, and this she might do *ex provisione legis*, and so be sure to have no Loss. *Co. Lit.* 173.

The Issue in Tail shall never be barred, without a full Recompence ; but a Partition of Lands intailed between Parceners, if it be equal at the Time of the Partition, it shall bind the Issue in Tail for ever ; although the one do alien her Part. *Dyer* 1. *Mar.* 98.

If a Man be seised in Fee of an Acre of Land, by just Title, and he obtains another Acre by disseising an Infant, he has Issue two Daughters, and dies seised of both Acres, the Infant being then within Age ; and the Daughters enter and make Partition ; now, if afterwards the Infant make an Entry into the Acre, of which he was disseised, upon the Possession of the Parcener, then the same Parcener may enter into the other Acre, which her Sister has, and hold in Parcenary with her. *Co. Lit.* 173.

When the Privy of Estate remains, and the Part of the one is evicted, she shall enter and hold in Coparcenary with her other Coparcener ; and so it is in the Case of an Exchange. But when the whole Privy between Coparceners is destroyed, there ceases all Expectation of Recompence, either upon the Condition or Warranty in Law, by Force of the Partition. *Ibid.*

If one Parcener make a Feoffment in Fee, and her Feoffee, being impleaded, voucheth the Feoffor, she may have Aid of her Coparcener to deraign a Warranty Paramount, but never to recover *Pro rata* against her by Force of the Warranty in Law upon the

Partition; for by her Alienation, she hath dismissed herself from having any Part of the Land, as Parcener; and as Parcener she must recover *pro rata*, upon the Warranty in Law. *Hob.* 21, 26.

A Man is seised of Lands in Fee, and hath Issue two Daughters, and makes a Gift in Tail to one of them, and then dies seised of the Reversion in Fee, which descends to both Sisters, the Donee, or her Issue, is impleaded, she shall not pray in Aid of the other Coparcener, either to recover *pro rata*, or to de-rain the Warranty Paramount, because the other Sister is a Stranger to the Estate-Tail, whereof the Eldest was sole Tenant, and Partition never was, nor could be made thereof. *Co. Lit.* 174.

When one of the Coparceners enters into the whole Estate generally, this does not de-vest the other of her Right, unless she that makes the Entry lays Claim to the Whole, and takes the Profits of the Whole; for that may de-vest the Freehold in Law of the other Parcener. *Co. Lit.* 373.

But after the Parceners are actually seised, the Taking of the whole Profits, or any Claim made by the one, cannot put the other out of Possession, without an actual putting out, or Disseisin. When one Coparcener entereth into the Whole, and maketh a Feoffment of the Whole, this de-vesteth the Freehold in Law, out of the other. *Ibid.*

If where there are two Coparceners, one disseises the other, and the Disseisee brings an Assise, and Recovers, she shall have Judgment to hold her Moiety in Severalty: And

if one Coparcener Recover against another in a *Nuper Obijt*, or a *Rationabili parte*, the Judgment shall be for the Demandant to Recover, and hold in Severality. *Bract. l. 4. Co. Lit. 167.*

A Writ *De Rationabili parte* may be brought where an Ancestor seised of Lands in Fee-simple, Leases the same for Life, and dies, having Issue two Daughters; and after the Death of Tenant for Life, one of the Daughters enters into the whole Inheritance, and deforceth her Sister, the Sister so deforced may bring this Writ. It is maintainable by two or three Sisters against the Fourth, or by an Aunt or Niece against a Sister; and it lies as well where the Ancestor died seised, as where he died not seised. *F.N.B. 9.*

If a Man seised of Lands in Fee-simple, hath Issue two Daughters, and one of the Daughters is Attainted of Felony; the Father dies, both Daughters being living; one Moiety shall descend to the one Daughter, and the other Moiety shall Escheat. But if a Man make a Lease for Life, Remainder to the Right Heirs of a Person, being dead, who had Issue two Daughters, whereof one is Attainted of Felony, in this Case, some have said, that the Remainder is not good for a Moiety, but void for the Whole; for that both the Daughters are but one Heir. *Co. Lit. 163. 1 Roll. 103.*

Husband and Wife, Tenants in Special Tail, have Issue a Daughter, the Wife dies, the Husband, by a second Wife, has Issue another Daughter, both the Daughters enter, (where the Eldest only is Inheritable)



and make Partition; the eldest Daughter, during her Life, cannot impeach the Partition; or say that the Youngest is not Heir, and yet she is a Stranger to the Tail; but in Respect of Privy in their Persons, the Partition shall conclude; though the Issue of the eldest Daughter shall avoid this Partition, as Issue in Tail. 4 Co. 121.

A Partition between mere Strangers, in that Case, is void. And if there be three Coparceners, and a Stranger purchase the Part of one of them, he and one of the others shall not join in a Writ of Partition, neither by the Common Law, nor by Force of the Statute; but one of the Plaintiffs, (*viz.*) the Parcener, may have a Writ of Partition at the Common Law; and the other Parcener, being a Purchaser, may have it by the Statute; so that they shall not join in one Writ. *Dyer* 128.

If where there are three Coparceners, the Eldest purchases the Part of the Youngest, the Eldest having one Part by Discent, and the other by Purchase, shall have a Writ of Partition at the Common Law, against the middle Sister, and so of the others. And if there be three Coparceners, and the Eldest taking Husband, he makes a Purchase of the Part of the Youngest, although the Husband for his Part is a Stranger, and no Parcener, yet he and his Wife shall have a Writ of Partition against the middle Sister, at the Common Law, because he is seised of one Part in Right of his Wife, who is a Parcener. *F. N. B.* 52.

If the eldest Sister be disturbed in Presentation to an Advowson, by the Youngest, or other Sister, she and her Issue and Assigns, may have a *Quare Impedit* against such other Sister. But if there be four Coparceners, and the Eldest and the Second present ; and the other two present Jointly or Severally, the Ordinary may refuse them all, by Reason the Eldest did not present alone. 2 *Roll.* 346, 355. *Co. Lit.* 186.

None are called Parceners by the Common Law, but Females, or the Heirs of Females, which come to Lands or Tenements by Descent ; for if Sisters purchase Lands or Tenements, they are called Joint-tenants, and not Parceners. *Lit.*

Between Joint-tenants, there is a two-fold Privy, (*viz.*) in Estate and Possession : Between Tenants in Common, there is Privy only in Possession, and not in Estate ; but Parceners have a three-fold Privy, (*viz.*) in Estate, in Person, and in Possession. *Co. Lit.* 169.

And Parceners seised in Fee-simple, may devise and give away their Parts by Will ; so cannot Joint-tenants. One Coparcener may infeoff another Coparcener ; for though their Possession be joint, yet their Interest is severed ; but it is otherwise with Joint-tenants, whose Right is Entire, and goes with the Possession by Survivorship. Parceners may Release one to the other ; and in this they are like Jointenants only : For if one Tenant in Common Release to his Fellow, this Moiety passes not, because he to whom the Release is made of such Moiety, has no Possession.

But Parceners, whose Right is from one Root, have a more connect Possession than Tenants in Common, and may Release one unto another. And Parceners differ both from Joint-tenants and Tenants in Common in this, that Coparceners were always compellable to make Partition, so was neither of the other two, before the Stat. 31 H. 8.

By 8 & 9 W. 3. After Process returned upon a Writ of Partition, and Affidavit of Notice made, &c. if an Appearance be not entered in fifteen Days, the Demandant having enter'd his Declaration, the Court may proceed to give Judgment by Default, and award Partition to be made, &c. But if the Party concerned, move the Court in a Year, and shew good Matter in Bar, the Judgment may be suspended or set aside.

Where Lands of Coparceners are held of a superior Lord, the eldest Coparcener is to do Suit for the whole; but the Lord may take a Distress on the other Parceners, as well as the Eldest; and in such Case the others shall have a Writ against the Eldest, to compel her to do the Suit of Court; and if the Eldest, having done the Suit, the others refuse to make Contribution, she shall by Writ oblige them to it. *F. N. B.* 160.

Castles of Habitation for private Use, may be parted between Coparceners, like unto other Houses; but if a Castle, that is used for the necessary Defence of the Realm, descend to two or more Coparceners, this Castle shall not be divided into Chambers and Rooms, because it is *Pro bono publico*, & *pro defensione Regni*. *Co. Lit.* 165.

I have

I have been the more particular under the Head of Parceners, as the the great Sir *Edward Coke*, says, The Inheritance by Coparcenership, is the rarest Kind that is in the Law. I now proceed to Matrimonial Contracts, Consummation of Marriage, &c.

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*Of Marriage Contracts, Consummation of Marriage, Forced Enjoyments, Polygamy, &c.*

A Marriage Contract is an Agreement between a Man and a Woman, to live together in a constant Society, 'till the Contract is dissolved by Death, or Breach of Faith, or some notorious Misbehaviour, destructive of the Ends for which Matrimony was intended.

And nothing more is requisite to a compleat Marriage by the Laws of *England*, than a full, free and mutual Consent between Parties, not disabled to enter into that State, by their near Relation to each other, Infancy, Precontract or Impotency; for Marriage is of Divine Institution, to which only the Consent of the Parties is necessary, though the Solemnizing of it is a Civil Right, regulated by the Laws and Customs of Nations.

I have already observed, that at Twelve Years of Age, the Female, and Fourteen Years the Male, they may consent to and contract Marriage.

But



But strictly, such a Number of Years, does not seem so essential for contracting Matrimony, as Maturity, Ripeness and Disposition of Body; for some Females may be fit for Marriage at Eleven Years of Age, when others may have an intire Inability at Thirteen or Fourteen.

If either Party be under their Ages to consent to Marriage, the Contract is voidable; and if the Female be under Seven Years of Age, such Contract is absolutely void: But Marriages of Princes, made by the State in their Behalf, at any Age are held good; though many of these Contracts have been broke through. *Swinb. Matrim. Contr.*

In Contracts of Matrimony, the Persons contracting ought to be of sound Mind, and Lunaticks may not marry. But a Person who is Deaf or Dumb, may contract Matrimony; and so may an Idiot, and it shall bind him. *1 Roll. Abr. 357.*

Persons, who, by Coldness of Nature, or other Means are Impotent, are forbid to contract Marriage. And in other Persons, if after Matrimony is contracted, some evil Disease (as Leprosy, &c.) renders one of the Parties unfit for Generation, the other may *repudiate*, and abandon him or her so diseased. But when a Man and Woman are married, they are so unpartable, that they may not entirely omit the Marriage Duty, altho' one of them have the Leprosy. And *St. Paul*, says, *That the Husband has not Power over his own Body, &c.*

And though Impotency before Marriage, will invalidate a Contract of Matrimony and  
Marriage

Marriage itself; yet when Disability happens after Marriage, he or she that remains Potent, shall not be permitted to quit the impotent Person, but be compelled to bear the Discommodity, as well as any other ill Fortune in Life.

A Promise of Matrimony must be mutual; and therefore if the Man say to the Woman, I do promise that I will marry thee, but the Woman makes no Promise to the Man; or contrariwise, the Woman doth promise, but not the Man, this is a lame Contract, and not of any Force in Law, neither is the silent Party, in this Case, presumed to Consent, without such Consent appear, or the Father or Mother promise Marriage for the Child; for the Child's Silence in this Case (being present and hearing the same) is taken for a Consent and Approbation; but it is otherwise if any other Person than the Parents promise for the Child. *Swinb. Matr. Cont.*

*p. 5.*

Yet if neither the one Party nor the other utter the Contract, but some third Person pronounces the Words; as if he say to the Man, Dost thou take this Woman to be thy Wife, &c. and he answers Yes, or I do, or any thing else amounting to a Consent, is of the same Efficacy, as if the Parties themselves had with their own Mouths declared the Words of the Contract. *Swinb. 86.*

There is a Difference between a Promise *de præsenti*, and a Promise *de futuro*. A Promise *de præsenti*; as, I do take thee to my Wife, and I do take thee to my Husband, cannot by any Agreement be dissolved or released,

leased, but they are reputed Husband and Wife, in Respect of the Substance and indissoluble Knot of Matrimony. Therefore if either of them should marry with any other Person, consummating the same by carnal Copulation, and Procreation of Children, this Matrimony is to be dissolved, as unlawful, the Parties marrying to be punished as Adulterers, and their Issue in Danger of Bastardy. *Swinb.* 9, 10, 11. See *Mod. Ca.* 155.

By Promise *de futuro*, as, I will take thee to my Wife, &c. the Parties are not very Husband and Wife; for by mutual Agreement they may dissolve those Spousals, and match themselves elsewhere; and so they may if but one of them renounce; for by the Words, *will do*, the Thing is not thereby done indeed; as in Case of the other. *Ibid.* But on a Promise of future Marriage, if the Parties afterwards lie together, the Contract passes thereby into a real Marriage, in Construction of Law. *Swinb.*

If a Man say to a Woman, I do promise to marry thee; and if thou be content to marry me, then kiss me, or give me thy Hand; and the other Party do kiss or give her Hand accordingly, Spousals are contracted. *Swinb.* 69.

A Ring is solemnly delivered and put on the Woman's fourth Finger, by the Party himself, and she willingly accepts the same, and wears it, the Parties are presumed to have mutually consented to be Man and Wife; and so have contracted Matrimony, altho' they used not any Words. *Swinb.* 210, &c.

When

When it is demanded of a Man, whether he will take the Woman to his Wife, and he answers, I will ; and it is demanded of the Woman, if she will take the Man to her Husband, and she answers, I will ; by this Marriage, and not Spousals, is said to be contracted. And the Words, I will take thee from henceforth, &c. are as much as I do take thee, and an absolute Marriage. *Swinb.*

In Contracts of Marriage, it is not necessary that both Parties use the same Expressions ; but if one Party says I will marry thee, and the other answers I am content, &c. hereby Spousals are contracted. And where the Man's promise is proved, but no actual Promise on the Side of the Woman ; if she carries herself as one consenting, and approving the Promise of the Man, it is Evidence that the Woman likewise promised. *3 Salk. Rep. 16.*

And though there be some Distance of Time betwixt the Promise of the Man and the Woman, the Contract may be good, if the Party first promising continue in the same Mind, until the other Party hath promised ; but where the Words of the Contract are only Conditional on one Side, and on the other Side absolute ; or if they are spoken in Jest, they are not Obligatory. *Swinb. 210.*

Contracts of Marriage may be by Mediation of Proctors, when the Parties are absent from each other ; and when it is by *Proxy*, it is by Special Power of Attorney to contract Matrimony for the Party in his Name, with such a Woman, &c. In which Case,  
both



both Parties are to continue in the same Mind 'til the Contract is finished; for before that the Proctor may be revoked, and then the Contract will be void. A Promise or Contract of Marriage is good by Messenger or Letter, except it appear that the Party dissents before the other consents to the same; and the mutual Consent of the other Party ought to be sent immediately, &c. *Ibid.*

On a Promise of Marriage, Damages may be recovered in an Action at Law, if either Party refuses to marry; but the Promise and Remedy must be mutual on both Sides. And by the Stat. 29 Car. 2. no Action shall be brought upon any Agreement or Consideration of Marriage, unless it be put in Writing, and signed by the Party to be charged. 1 *Salk.* 24. By *Holt*, Ch. Just. a Man is bound, in Respect of the Woman's Promise; and her Promise must be good, to make his signify any thing to her, in an Action to be brought upon it. 5 *Mod. Rep.* 412.

Where Jewels, &c. are given as a Pledge of future Marriage between two Persons, there is an implied Condition annex'd, that if Matrimony do not ensue, the Things may be demanded back and recovered. Though according to our old Books, if the Man had a Kiss for his Money, then the one Half of what was given could only be recovered, and the other Half was to be the Woman's own Goods; but the Female is more favoured, for whatsoever she gave, were there kissing or no kissing in the Case, she may demand and have all again.

A Person

A Person of Quality intending a Marriage with a Lady, presented her with a Jewel ; and the Marriage not taking Effect, he brought an Action of Detinue against her, and she taking it to be a Gift, offered to wage her Law ; but the Court was of Opinion, That the Property was not changed by this Gift, being to a Special Intent, and therefore would not admit her to do it. 2 *Mod. Rep.* 141.

Although Spousals are always made with an Intention that Matrimony should ensue, yet the Contractor cannot be compelled thereto (neither are the Parties obliged to marry, though an Oath accompanied the Promise) unless it were made pure, and without Condition ; for in Conditional Contracts the Bond of Performance is suspended in the Condition, till that be performed, except there follow a Relinquishment of it, by Copulation of Bodies.

If a Promise of Marriage be made without any Limitation of Time, then (if there appear not any weighty Cause of Stay) if both the Parties are resident in one Province, the Woman may after two Years marry to whom she pleases ; but if the Man does not reside in the same Province, it is said she must tarry three Years.

And by the Ecclesiastical Laws, if any having absolutely contracted Spousals, afterwards refuse to have the Marriage solemnised, he or she so refusing, are liable to be Excommunicated, and to be committed to Prison ; and there to be kept without Bail or Mainprize, until he or she submit to the Monition  
of

32      **Of feme Coverts: Of,**

of the Ordinary, and agree to the Celebration of the Marriage. *Swinb.*

The Degrees of Consanguinity, and of Affinity and Alliance, prohibited Marriage by the *Levitical Law*, are as follow:

*A Man may not marry,*

His Mother, — His Father's Sister, — His  
Mother's Sister,  
His Sister,  
His Daughter,  
The Daughter of his Son or Daughter,  
His Uncle's Wife, Father's Wife, Father's  
Wife's Daughter.  
His Brother's Wife, Wife's Sister,  
His Son's Wife, or Wife's Daughter,  
The Daughter of his Wife's Son or Daughter.

*A Woman may not marry,*

Her Father, — Her Father's Brother, —  
Her Mother's Brother,  
Her Brother,  
Her Son,  
The Son of her Daughter,  
Her Aunt's Husband, her Mother's Husband,  
Her Sister's Husband, her Husband's Brother,  
Her Daughter's Husband,  
The Son of her Husband's Son or Daughter.

Marriages between Cousin Germans, and all Marriages onwards, are by the Statute 32 H. 8. declared lawful. One married the Widow of his Brother's Son, and it was adjudged lawful. *Lit. Rep.* 356. *William's Case.*  
But

But where a Person married his Wife's Sister's Daughter, Sentence of Divorce was given. *Cro. Eliz.* 299.

On a Libel exhibited against a Person for marrying his Wife's Sister, the Ecclesiastical Court annulled the Marriage, and bastardised the Issue. But a Prohibition was granted, as to annulling the Marriage, and bastardising the Issue, and giving Leave to proceed to punish the Incest. *Note*; here the Wife was dead, and an Estate descended to her Son. 2 *Salk.* 548.

A Man marrying his Sister's Daughter, being sued in the Ecclesiastical Court, prayed a Prohibition, because out of the *Levitical* Degrees; but it was denied. *Raym.* 464. Though if a Man marry his Mother or Sister, they are Husband and Wife until a Divorce.

Affinity prohibits Marriage only to the Persons contracted, &c. for the Cousins or Consanguinity to my Wife, are of Affinity only to me, and not to my Brothers, or Children by a former Wife; and my Blood and Consanguinity are Kindred, and of Affinity only to my Wife, and not to her Brothers, or former Children. Hence it is, that the Father and the Son may marry the Mother and the Daughter, and two Brethren may marry two Sisters in another Family.

Marriage is defined to be a Conjunction of Man and Woman; an inseparable Connection and Union of Life; but it is not accounted Consummated until, with the Consent of Mind, there is a Conjunction of Bo-



dy. And it was faid in the Beginning, *That Man and Wife fhall be one Flefh.*

In Conſtruction of the *Civil Law*, the Wife is *Uxor*, before the Spouſals by Contract; for if they have carnal Copulation after Contract, they ſhall not be puniſhed for Fornication, only for Contempt againſt an Edict of the Church, which has prohibited Bedding before the Spouſals are ſolemnized in *Facie Eccleſiæ*. See 2 *Salk.* 438.

But before the Time of Pope *Innocent* the Third, there was no Solemnization of Marriages in the Church; for then it was firſt ordained. Before that Time, the Marriage was ſolemnized thus; The Man came to the Houſe where the Woman reſided, and in the Preſence of her Friends and Relations, took the Woman to his own Houſe; and this was all the Ceremony. *Moor* 170.

A *Difſenter* was married to a Woman, by a Miniſter of the Congregation, who was not in Orders; it was held in this Caſe, that when a Man demands a Right to him, as a Husband, by the Eccleſiaſtical Law, he ought to prove himſelf a Husband by that Law; and he ſhall not be entitled by the Reputation of the Marriage, unleſs he hath a ſubſtantial Right. But this Marriage is not a meer Nullity; becauſe by the Law of Nature, the Contract is binding; for tho' the poſitive Law of Man ordains Marriages to be made by a Prieſt, that Law only makes this Marriage irregular, and not expreſſy void. 1 *Salk. Rep.* 119.

A Mar-

A Marriage *De facto*, or in Reputation among *Quakers*, &c. hath been allowed to be sufficient to give Title to a Personal Estate. 1 *Leon.* 53. *Wood's Inst.* 59. But Popish Recusants, who are not married according to the Orders of the Church of *England*, shall be disabled, the Husband to be Tenant by the Curtesy; and the Wife to have Dower, &c. and they are also liable to further Penalties, by Stat. 3 *Jac.* 1.

By the Ordinances of the Church, before Persons are to be married, the *Banns* of Matrimony shall be published in the Church where they dwell, three several *Sundays* or *Holidays*, in the Time of Divine Service. And if at the Time appointed for their Marriage, any Man do alledge any lawful Impediment, why they should not be married, and become bound with sufficient Sureties to prove his Allegation, then the Solemnization must be put off till such Time as the Truth is tried. *Rubrick.*

And no Minister shall celebrate Matrimony between any Persons, without a Faculty or Licence, except the Banns of Marriage have been first published, as directed by the Book of *Common Prayer*, upon Pain of Suspension, *per triennium.* *Can.* 62. And on the granting of Licences, Bond shall be taken that there is no Impediment of Pre-contract, Consanguinity, &c. nor any Suit depending in any Ecclesiastical Court, touching any Contract of Marriage of either of the Parties with any other; that the Marriage be celebrated in the Parish Church, where one of the Parties

dwelleth; and that between the Hours of Eight and Twelve in the Morning. Oath ought likewise to be made of there being no Impediment; and two Witnesses to testify the Consent of Parents, &c. Licences to the contrary are void; and the Persons marrying may be punished, as for clandestine Marriages. *Can.* 102.

But notwithstanding this Provision by the *Canons* of our Church, Persons of Quality are often married at their own Houses, and out of Canonical Hours, in the Evening; and other Persons are married in other Churches than where one of the Parties lives, and out of Time of Divine Service, &c. And on the granting of Licences for Marriage, the Testification of Witnesses of the Consent of Parents, &c. is refused. All these Things are dispensed with, in regard to the Substance of the Marriage.

In *Lent*, and on Fasting Days, Marriages are prohibited; for the Mirth attending them is not suitable to the Devotion of those Times; but Persons may marry with Licences in *Lent*, (and thereby turn the Fast into a Feast) although the Banns of Matrimony may not then be published. *Can.*

By the Stat. 7 & 8 *W.* 3. if any Parson, Vicar or Curate, marry any Person in any Church, &c. without publishing the Banns of Matrimony, according to Law, or without Licence, he shall forfeit 100*l.* And Parsons knowingly employing others so to do, are liable to the like Penalty; one Moiety to the King, and the other to the Informer.

And

And every Man so married, without Licence, or publishing the Banns, shall forfeit 10 l. and Parish Clerks, &c. 5 l.

Before this Stat. an Information was exhibited against a Person for an unlawful Combination, in procuring a clandestine Marriage in the Night, between a Maid Servant and a young Gentleman, who was Heir to an Estate, without Banns or Licence; and the young Gentleman being Drunk, they were fined an hundred Marks, and committed till paid. But it doth not appear that the Marriage could be made void. *Cro. Car. 557.*

### A Licence for Marriage.

**S**alutem & gratiam. Cum vos uti asseritur ad solemnizationem Matrimonii veri & legitimi de & cum consensu parentum vel gubernatorum vestrorum & utriusque vestrum procedere decreveritis illudque in facie Ecclesiæ solemnizari facere & obtinere magnopere desideratis; nos volentes ut honesta hæc vestra desideria debitum celerius consequantur effectum, ut igitur Matrimonium huiusmodi in Ecclesia de, &c. per Rectorem Vicarium vel Curatum ejusdem Ecclesiæ absque aliquibus Bannis Matrimonialibus editis & proclamatis quocunque anni tempore libere & licite solemnizari facere & obtinere possitis & valeatis. Dummodo vobis ratione præcontractus consanguinitatis affinitatis, vel alterius causæ cujuscunque nullum legitimum in ea parte obstiterit impedimentum nec ulla controversia seu querela mota sit vel pendeat coram aliquo iudice



*Ecclesiastico vel Civili de Matrimonio aliquo contracto vel allegato cum alterutro vestrum ac modo Matrimonii hujusmodi celebratio publica in Ecclesia predicta fiat inter horas octavam & duodecimam ante meridiem absque tamen præjudicio Ministri Ecclesiæ ubi dicta mulier Parochiana existit licentiam & facultatem tam vobis contrahentibus quam Rectori, Vicario vel Curato Ecclesiæ predictæ designato Matrimonium hujusmodi inter vos solemnizand' sub modo & forma superius specificatis juxta ritus libri publicarum precum auctoritate Parliamenti in ea parte editi ex causis legitimis benigne concedimus & gratiose dispensamus. Proviso tamen semper quod si aliquid fraudis in hac parte imposterum appareat vel falsitatis nobis suggestæ vel suppressæ veritatis tempore hujus licentiæ obtentæ tunc hæc licentia nostra irrita sit ad omnem juris effectum ac si omnino concessa non fuisset. Et eo casu inhibemus quibusvis ministris modo præmissorum aliquid eis innotuerit, ne ad celebrationem dicti Matrimonii procedant nisi nobis prius consultis.*

*Dat' sub sigillo, &c.*

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The Condition of the Bond given, on  
taking out a Licence.

**T**HE Condition of this Obligation is such, That if hereafter there shall not appear any lawful Let or Impediment, by Reason of any Pre-contract, Consanguinity, Affinity, or any other lawful Maans whatsoever; but that the above bound A. B. and E. F. Daughter of, &c. may lawfully solemnize Marriage together; and in the same afterwards remain and continue for Man an Wife, according to the Laws in that Behalf provided. And also if there be not, at this present Time, any Action, Suit, Plaint, &c. moved or depending before any Judge Ecclesiastical or Temporal, for or concerning any such lawful Impediment before the said Parties; nor that either of them be of any better Estate or Degree than to the Judge, at the granting of the Licence is suggested by the said A. B. and that the said Marriage be openly solemnised in the Church, according to the Form of the Book of Common Prayer, and between the Hours appointed in the Constitutions Ecclesiastical. Then, &c. or else, &c.

By our Law, Marriage being once lawfully solemnised, and without Impediment, by one in Holy Orders, all the World cannot dissolve it, let it be at what Time and Place it will. *Sid. Rep. 64.*

But if a Man at Fourteen, marry a Woman at the Age of Ten, at her Age of Twelve Years (her Age to consent to Matrimony)

he may disagree, as well as she may. And if a Man marry a Woman who is within the Age of Twelve Years, and afterwards the Wife disagrees to the Marriage, within her Age of Twelve Years also, and at the said Age of Twelve Years marry with another, now the first Marriage is absolutely defeated, so that he may take another Wife; for although the Disagreement within the Age of Consent, was not sufficient, yet her taking another Husband at the Age of Consent, and cohabiting with him, affirms the Disagreement, and so the Marriage is void *ab initio*. *Babington's Case. Moor 575, 764.*

Though if a Man marry a Woman within the Age of Twelve Years, and after the Wife at Eleven Years of Age Disagrees to the Marriage, and then the Husband takes another Wife, and has Issue by her, this is a Bastard; for the first Marriage continues notwithstanding the Disagreement of the Woman, as she may not Disagree within the Age of Twelve Years. *1 Roll. Abr. 341.*

A Woman marries a Man within Twelve Years of Age, and before the said Age of Twelve Years disagrees, and then marries with another, the second Marriage resolved to be good. But if a Man within the Age of Fourteen takes a Wife of Twelve or more, this is a Marriage, and they are Baron and Feme, *de facto*; and the Husband may have Trespass, *de muliere abducta cum bonis viri*, *Trin. 12 Jac. B. R. Bradshaw and Fletcher.*

But where a Man is at the Age of Consent, and the Woman not; or the Woman of Age, and the Man not, he or she may disagree to the  
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the Marriage at the other's coming of Age to consent, as well as the other; for there is a mutual Power of Disagreement. 3 *Inst.* 88. 1 *Danv. Abr.* 699.

And if Persons are married before the Age of Consent, they may at that Age Disagree, and marry again, without any Divorce. But if they once give their Consent when they are at that Age, they cannot afterwards disagree; and when they are married before, there needeth not a new Marriage, if they agree at that Age. 1 *Co. Inst.* 33. 2 *Inst.* 182.

And if after Disagreement of the Parties, at the Age of Consent they agree to the Marriage, and live together as Man and Wife, the Marriage hath Continuance: Though if the Disagreement had been before the Ordinary, it is said they could not after agree again to make it a good Marriage. 1 *Danv. Abr.* 699, 700.

If Persons married are *infra annos nubiles*, the Ecclesiastical Judges are to judge as well of the Assent, whether sufficient, &c. as of the first Contract. And Loyalty or Lawfulness of Marriage, is to be tried by the Bishop's Certificate, on Inquisition taken before him, and Examination of Witnesses, &c. But in a Personal Action, where the Right of Marriage is not in Question, whether a Woman is married, or is the Wife of such a Person, is triable by a Jury at Common Law. 7 *Rep.* 23. *Dyer* 303. 3 *Salk.* 64.

If a Feme Obligee take the Obligor to Husband, this is a Release in Law of the Debt. And if a Woman be *Warden* of the *Fleet*, and one that is in Prison there marry her, the  
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Law adjudges him to be then enlarged; for it is repugnant, that he, as her Husband, should have the Custody of her, or she, as a Gaoler, have the Custody of him; unless it be construed in a ludicrous Sense. 2 *Vent.* 19.

Agreements between a Man and a Woman, who afterwards marry, are commonly by the Marriage extinguished. *Hob.* 216. But this has been ruled, where such Agreements are to have Execution during the Coverture, and not afterwards; as where a Man promises a Woman, That if she will marry him, and he dies before her, he will leave her worth so much Money, &c.

A Man devises to his Daughter one thousand Pounds, upon Condition that she marries with the Consent of *A.* and *B.* and it was held, that altho', by the Ecclesiastical Law, such a Condition annexed to a Legacy is void; because the Marriage ought to be free, without Coertion; yet it is not so at the Common Law. *Poph.* 58, 57.

By 4 & 5 *P. & M.* it is enacted, That if any Person shall take away a Woman Child, under the Age of Sixteen Years, out of the Custody, and against the Will of the Father or Mother, or of the Person to whom the Father devised the Child; the Punishment in such Cases, is two Years Imprisonment, without Bail, or a Fine imposed in *B. R.* If he marry or defile such Child, he shall be imprisoned five Years. And if the Child is above Twelve, and under Sixteen Years of Age, and consenting to the Marriage, then the next of Kin, to whom her Inheritance would descend, shall enjoy it during her Life; but af-  
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ter her Decease, it shall go to the Heir at Law, and never to the Husband.

A Freeman of *London* devised the Custody of his Daughter to *A.* and died, the Daughter being then in the Country; *A.* procured a Warrant from the Lord Chief Justice to take her, and by Virtue thereof, took her accordingly, but she was then married to *B.* this was held to be out of the Statute, because the Female was never in the Possession of the Guardian. *Sid.* 363.

The stealing or taking away a Woman that hath an Estate in Lands or Goods, or is Heir apparent, by Force and against her Will, and marrying or defiling her, is Felony without Benefit of Clergy. 3 *H.* 7. 39 *Eliz.* And Aiders and Assisters are Principals. *Mich.* 1 *Anne.*

The Indictment on the Stat. 3 *H.* 7. is expressly to forth, that the Woman taken away had Lands or Goods, or was Heir apparent; and also that she was was married or defiled, because no other Case is within the Statute; and it ought to alledge, that the Taking was for Lucre. And it is no Excuse that the Woman at first was taken away with her Consent, if she be afterwards forced to stay against her Will; or that she be after married with her Consent, if she were under the Force at the Time. 3 *Inst.* 61. *H. P. C.* 119. 1 *Hawk.* 109, 110.

A Man enticed the only Daughter of her Father, who would be worth 5000 *l.* to see a Ship; and when he had her on the *Thames*, carried her by Force and Threats into the Country, and there married her; but this was

was held not to be within the Statute, she having a Brother; for by the Statute she must be Heir apparent, &c. and she had not a present Estate in Lands or Goods, her Father being living. *Hob. 182.*

But admitting a Woman has an Estate in Lands or other Substance, or is Heir apparent, a Man may force her to make a Contract, and be no Felony; for there must be a Taking by Force, and a marrying or defiling. *Sav. 59.*

In the Reign of King *Charles I.* the Lady *Fullwood*, *Roger Fullwood* her Son, and divers others, were indicted for taking away by Force, and the said *Roger*, by Procurement of the said Lady, marrying *Sarah Cock*, a Maid who had a Portion of 1300*l.* It was agreed, in this Case, that Taking of a Woman, unless she be married or defiled, is not Felony. But here she was married; and whereas they pretended that it was with the Female's Consent, and therefore not within the Statute; the Court said, that the Taking being unlawful and by Force, tho' the Marriage was with her Consent, yet it was Felony. In this Case, the Lady *Fullwood* was indicted in the County of *Surrey*, and the said *Roger Fullwood*, and others, were indicted in the County of *Middlesex*. Though if a Woman be taken by Force in the County of *A.* and married in the County of *B.* the Offender may be tried in the County of *B.* and Judgment was given that they should be hang'd.

*Anno 31 H. 8.* *Henry Sturges* and other Persons were indicted for taking one *Agnes Hobson*,

*Hobson* against her Will, who was the Daughter and Heir of *John Hobson*, who was seised of a large Estate in Lands. And they pleaded to the Indictment, that they ought not to answer, *pro eo quod non mentionatur*, in the said Indictment, *quod ceperunt ad intentionem maritandi dictam Agnetem vel ad prostituendam*, &c. and they were discharged.

In the Second Year of Queen *Anne*, a Person was indicted at the *Old Bailey* for stealing an Heiress worth 2000*l.* in Money, and 20*l.* a Year Estate in Lands; he procured her to be arrested, and threatned that she should go to *Newgate*, if she did not marry him, and thereupon out of Fear, she was married to him without her Consent. He pleaded in his Defence, that she had shewn him singular Marks of her Love; that she had been on Shipboard with him, was uneasy if he sat not next her, had discarded her former Lover, &c. but the Jury found him Guilty, and he was hanged. *Swanston's Case.*

On an Information exhibited against a Person for taking and marrying the sole Daughter and Heir apparent of *T. of Kent*, without the Assent, and against the Will of her Father; it was proved that he secretly contracted himself to her; and by Appointment between them, she left her Father's House, and came to *London*, where she was married to him. This was an Offence punishable by Fine and Imprisonment at Common Law; and being prosecuted by the Father and Mother, they pray'd the Fine might be moderated, and they were discharged out of Prison, upon Bail. *Sid. 387.* And the Statutes



3 H 7. and 4 & 5 P. & M. were said to be but an Aggravation of the Punishment, and do not create any Offence originally. 2 Keb. 432.

A Man steals his Wife against her Friend's Consent, and after sues in Equity for her Portion; but denied Relief by Egerton Chancellor, who said, *He that steals the Flesh, let him provide Bread how he can.* Carey's Rep.

It has been lately adjudged, that whenever a Husband comes into a Court of Equity, for his Wife's Portion, the Chancery will oblige him to make a Settlement on her; or to secure her a Maintenance, in Case she outlives the Husband. And where a Man makes a Settlement equivalent, it shall be intended that he is to have her Portion. 2 Vern.Chan. Rep. 494, 502.

One Griffiths, a mean Person, having married a Woman of Fortune, upon Suggestion by the Friends of the Wife, of Lunacy, though the Woman was sensible enough, it was moved in B. R. that the Estate might be so settled, that she might not be wrought on by the Husband, to give it him from her Children, &c. which the Court order'd. Skin. Rep. 110.

Action of the Case lies for Damages, where a Man married to another Woman, marries a second Wife, whereby her Credit is injur'd, &c. Ibid. 119.

By Statute, it is Felony for a Man or Woman, of the Ages to consent to Matrimony, to marry a second Wife or Husband, the first being then living: But if either a Husband or Wife, shall be beyond the Seas, or  
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be absent in *England*, the Space of Seven Years, and the one of them not know whether the other be living within that Time, it is not Felony to marry again. 1 *Jac. I. c. II.*

One was indicted of Felony upon this Statute, for having two Wives; and the Evidence was, that he espoused one beyond the Seas, and another here in *England*; and the Court was of Opinion, that he might be indicted for it here, the latter Marriage making the Crime; but otherwise if the second Marriage were beyond Sea. 1 *Sid. 171.*

*Rape* is also Felony, which is where a Man has carnal Knowledge of a Woman by Force, and against her Will. And if a Female, under the Age of Ten Years, be deflowered, either with or against her Consent, it is Felony without Benefit of Clergy. Stat. 18 *El. cap. 6.*

But there must be *Penetration* and *Emission* to make this Crime; and it must be prov'd that the Offender entered her Body, that there was *res in re*, or it is no Rape. For an Attempt to ravish a Woman, though it be never so outrageous, is an Assault only. 3 *Inst. 60. H. P. C.*

If a Woman ravish'd, yielded to the Violence, and such her Consent was forced by Fear of Death, or of Duress, this does not work any Mitigation of the Crime in the Ravisher; or if she consented after the Fact, or was a common Strumpet, for she is still under the Protection of the Law. But formerly it was adjudged no Rape to force a Man's own Concubine; and it is said by some  
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to be Evidence of a Woman's Consent, that she was a common Whore. *Dalt. c. 105. 1 Co. Inst. 123. 1 Hawk. P. C. 108.*

In ancient Times, it was held not to be a Rape to force a Woman, who conceived at the Time; because if she had not consented she could not have conceived; but this Opinion hath been since Questioned, because the previous Violence is no way extenuated by such a subsequent Consent. *2 Inst. 190.*

A Woman ravished may prosecute, and be a Witness in her own Cause; though a Woman's Oath of a Rape, without concurring Circumstances, is seldom credited; for if a Man can prove that he was in another Place, and in other Company, at the Time she charges him with the Fact; or if she be wrong in the Description, or swears that the Offence was committed in a Place whereto it was impossible the Man could have Access at that Time, being lock'd up, &c. this will overthrow her Oath. *3 Rep. 37. 1 H.P.C*

*Anno 22 Jac. 1.* A Man of Sixty Years of Age, who had a Wife, was arraigned for the Rape of a Girl of the Age of Seven Years, and no more; and by the Evidence of the Surgeon, several Women, and the Damsel herself, he was found Guilty and executed. *Dyer 304.*

In *Michaelmas Term, 14 Eliz.* a Scotchman was indicted for a Rape upon a Girl of Seven Years old; and upon the Evidence of credible Witnesses, was found Guilty; but the Court very much doubted whether the Fact could be committed upon such a young Girl. And this was the Reason of making the Stat.

18 *Eliz.* declaring it Felony to ravish a Girl under Ten Years of Age, though consenting to the Act.

And *Anno 9 Car. 1.* *Martin Page* was indicted at the *Old Baily*, for that he *Carnaliter Cognovit* an Infant under the Age of Ten Years. At his Trial the Jury would not find him Guilty, because it was not proved he enter'd the Body of the Child ; but he having very much abused her, the Court ordered an Indictment of Battery to be exhibited against him, which was tried at the Bar, and he was found Guilty, and fined an hundred Marks, and ordered to stand in the Pillory. *Cro. Car. 332.*

*Anno 1 Annæ*, one *Simpkins* was tried and found Guilty of a Rape, on the Body of a Girl of Ten Years of Age. He took the Girl backwards upon his Lap, and so forced her. It was proved that he entered her Bodo, spoiled her Privy Parts, and gave her the Venereal Disease. He was hanged ; as was likewise a Person 7 *Annæ*, for holding a young Girl whilst another ravished her.

The 1 *Geo. 1.* a Vintner and his Drawer were indicted for the Rape of a Female belonging to the *Hundreds of Drury*, who declared she was as innocent as an Angel in Heaven ; but I suppose she meant *Satan* cast from thence : She pretended to be a Virgin of Twenty-seven Years of Age ; but the Jury acquitted both the Prisoners. *Anne Cooper's Case.*

A Person was found Guilty of a Rape upon a Man's Wife ; and that after he had ravished her, he thrust a lighted Torch betwixt her Legs. *Kel. Rep. 30.*



In *Scotland*, the Woman is to complain the same Day or Night in which she is ravished; and by our Law, Complaint ought to be made in forty Days afterwards, but rather immediately; for Concealing it implies a Consent before the Fact. *H. P. C. 117. 3 Nels. Abr. 45.*

A Feme Covert may bring Appeal of Rape without her Husband; but this is where neither before nor after she gives Consent to the Ravisher; for if she afterwards consents, the Husband, Father, or next of Blood, there being no Husband, shall prosecute the Appeal. *13 E. 3. 11 H. 4.* And by *6 R. 2.* the Party ravished, if she afterwards consents, as well as the Ravisher, shall be disabled to hold or challenge any Estate of Inheritance, Dower, &c. and the next Blood shall enter on the Land.

In former Times, Rape was Felony, and punished with Death; unless the Woman ravished were a Virgin, and would accept of the Ravisher in Marriage, in which Case she might demand him for her Husband, and save his Life. *2 Inst. 180.*

This was only in the Will of the Woman, and not of the Man to demand the Female ravished for his Wife; for if it had been in the Will of the Man, this Inconvenience would have followed, That a Rascal Slave might ravish a Noblewoman, and by Occasion of one shameful Pollution, perpetually defile her, and to her Dishonour take her to Wife.

But in our Law-Books I find a Case where one *Henwick*, having ravished *Matilda*, the  
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Daughter of *Syward de Wharton*, he desired to have her to Wife; and the Court condescended that he should be affianc'd to her. *Hill. 6 Ed. 1.*

*Bracton* tells us, that by the Law of King *Athelstan*, If a Person meeting a Virgin, did touch her dishonestly, he was Guilty of breaking the King's Edict: If against her Will he threw her on the Ground, he lost the King's Favour; If he discovered her Nakedness, and cast himself upon her, he forfeited all his Possession; If he lay with her he suffered Judgment of Life and Member; and if he were a Horseman in the Wars, his Horse lost his Tail and Main. And the Virgin had in Recompence, all his Lands and Money, by the King's Warrant.

The punishing of the Horse, by Loss of Tail, seems a little Extraordinary; but perhaps it was necessary to add to the Disgrace and Infamy of the Rider and his Family, for the foul Act committed. And though the Punishment of the Ravisher hath undergone great Variations, by the Statutes and Ordinances of our Kings, yet by the Common Law it was always Death, at the Election of the Woman ravished.

In the Book *De priscis Legibus*, it is set down for a Law, made by *William* the Conqueror, that a Ravisher should not be hang'd, or otherwise put to Death, but his Eyes were to be pulled out, and his Privy Members, Feet or Hands, cut away, that the Trunk, or mutilate Body, still left alive, might remain as a Testimony of his Prodition and Lewdness.

This was a very mangling Law; and the Statute of *West. 1.* reduced the Crime to Trespass, subjecting the Offender to two Years Imprisonment and a Fine. But this easy Punishment, very much increasing the Offence, it was again made Felony, as it now stands. *Co. Lit. 123.*

A Woman may justify the killing a Person, attempting to ravish her. And a *Monk* had his Privy Members cut off, by a Man who caught him in Bed with his Wife, and the Husband was only tried for *Maibem.*

Buggery with Man or Beast, is Felony in Women as well as Men. The Case of a Lady of Quality, who committed this Crime with a Baboon, and conceived by him, may be read in 3 *Co. Inst. 59.*

*Of what Things belonging to the Wife, the Husband gains Possession by Marriage; and what the Wife is entitled to of the Husband's; of Dower, Joinders, &c.*

**B**Y Marriage with a Woman, who hath an Estate of Freehold, a Man gaineth such Estate of Freehold, and he may enter, &c.

As if a Man take to Wife a Woman seised in Fee of Lands or Tenements, by the Intermarriage, he is entitled to the same in her

her Right ; and yet this Estate, the Husband so gains, depends upon an Uncertainty, and is supported by Privy ; for if the Wife be Attainted of Felony, the Lord, by Escheat, shall enter, and put out the Husband ; unless the Felony be committed after Issue had, when the Husband may be Tenant by the Curtesy. And if the Husband be Attainted of Felony, the King acquires no Freehold, but a Pernancy of the Profits during the Coverture, and the Freehold remaineth in the Wife. *Co. Lit.* 350.

But if a Feme Termor takes Husband, yet the Term continues in her ; and if a Feme Sole possessed of a Chattel real, be thereof dispossessed, and then taking Husband, she dies, the Baron shall not have this meer Right, but the Executors or Administrators of the Wife shall have it. It is otherwise, if the Right accrues during the Coverture : And the Husband shall not have by the Intermarriage, Chattels real, consisting meerly in Action ; albeit he survives his Wife, except he recovered them in the Life of his Wife. *Co. Lit.* 357.

Chattels Real, being of a mixt Nature, partly in Possession, and partly in Action, which accrue, during the Coverture, the Husband is intitled to by the Marriage, if he survive his Wife, albeit he reduceth them not into Possession in her Life-time ; but if the Wife survives, she shall have them. As if the Husband be seised of a Rent-Charge, &c. in Right of his Wife, he shall have the Arrearages after the Death of the Wife ; though if the Wife survive the Husband, she



shall have the Arrears, and not the Executors of the Husband. But if the Arrearages become due before Marriage, whereby they were meerly in Action before the Marriage, in this Case, by the Common Law, he should not have them. But the Statute 32 H. 8. gives the Arrearages incurred as well before the Marriage as after, to the Husband, if he survives the Wife.

A Feme Sole hath a Lease for Years, and takes Husband, the Husband hath, by the Marriage, full Power to dispose of it; and if he survives his Wife, he shall enjoy it against her Executors; but if he makes no Disposition of it, and his Wife survives him, it remains to the Wife. *Hob. 3. Co. Lit. 46.*

Chattels Real, as Leases for Years, &c. are not given to the Husband absolutely by the Intermarriage, but conditionally, if the Husband happen to survive her; and tho' he hath Power to alien them at his Pleasure, in the mean Time the Husband is possessed of the Chattel Real in her Right. *Co. Lit. 300.*

Marriage is an absolute Gift of Chattels Personal in Possession, whether the Husband survive the Wife or not. *Co. Lit. 351.*

But a bare Possession of Personal Goods, is not by the Marriage given to the Husband; for if Goods are bail'd to a Feme Sole, or if she finds Goods, and after marries, the Action of Detinue must be brought against both Husband and Wife. *Co. Lit. 351.*

If the Wife have Goods, and take an Husband, the Husband dies, the Executors of the Husband shall have the Goods. And where the Wife loseth Goods, and marries, but the Husband

Husband dies, the Executors of the Husband shall have these Goods; because the Property is in him by the Marriage, notwithstanding the losing. And if the Goods of a Woman are taken in Distress, and she takes Husband, the Husband alone shall have the Replevin. *Sd.* 174.

A Legacy is devised to a Feme, who takes Husband, and the Baron makes a Letter of Attorney to another Person to receive the Legacy, and he receives it accordingly, this, by his Receipt, is become the Chattel of the Husband; for by the Receipt, this ceases to be a Thing in Action, and is become a Thing in Possession; and the Husband or his Executors, after the Death of the Feme, may have Account upon this Receipt against the Attorney who received it. *Moor* 452.

If a Feme Sole Obligee marries, and the Husband makes a Letter of Attorney to *A. B.* to receive the Money, who receives it, and after the Feme dies, the Baron shall have an Action of Account for the Money. *Moor* 452. And a Baron, possessed of an Obligation, in Right of his Wife, may give it to a Stranger. *Mich.* 38 & 39 *Eliz.*

Where a Feme Sole has a Patent for the sole Exercising a Trade, &c. and after takes Husband, the Husband shall have the Advantage of it, because he is Assignee in Law. *1 Jac.*

A Feme possessed of a Lease for Years, takes Husband, and they join in the Grant of a Term upon Condition, that if they, their Executors or Administrators, pay 10*l.* at such a Day, it shall be lawful for them to

re-enter, and after the Wife dies, the Husband pays the the 10*l.* and enters, and dies, his Executors shall have the Term, and not the Administrator of the Wife; for the Interest of the Term survives to the Husband.  
12 *fac. B. R.*

If the Husband be possessed of a Lease for Years of Land, in Right of the Wife, and after the Wife dies, the Interest of the Lease is presently vested in the Husband by Law, and he shall have it, and not the Administrator of the Wife. *Dyer 151.*

If a Term be granted in Trust, the Baron shall not have it, after the Death of the Feme. But if a Feme before Marriage grant over a Term to her own Use, the Husband shall nevertheless have the Money, which by his Wife, in her Life-time, was actually received upon this Trust; because, by the Receipt, the Husband had a Property in the Money. *Lit. Rep. 147.*

Baron and Feme, in the Right of the Wife, are seised of an Advowson, and the Church is void, and after the Feme dies, yet the Husband shall present to this Church; for it cannot be granted over, yet it is not merely in Action. 1 *Inst. 120.* But otherwise it is of a Bond to the Wife; as if a Man becomes bound to a Feme Covert, and she dies, her Husband shall not have this Obligation, without Administration; for that it is a Thing in Action.

Where a Man marries a Woman seised of Lands in Fee-simple, or Fee-tail general, or seised as Heir in Tail special, and hath Issue Male or Female, by the same Wife,  
born

born alive, though the Issue afterwards, either die or live, the Husband shall enjoy the Lands after the Death of the Wife, during his Life, by the *Curtesy of England*.

And by *Littleton*, in every Case where a Man takes a Wife seised of such an Estate in Lands or Tenements, &c. as the Issue which he has by his Wife, may by any Possibility inherit, as Heir to the Wife: After the Decease of the Wife, he shall have the Tenements by the *Curtesy of England*. *Lit. Sect. 52.*

But if Lands be given to a Woman, and the Heirs Male of her Body, and she taking Husband, hath Issue a Daughter, and dies, he shall not be Tenant by the *Curtesy*, because the Daughter, by no Possibility, could inherit the Mother's Estate in the Land. *Ibid.*

If a Man died seised of Lands in Fee-simple, or Fee-tail general, and these Lands descend to his Daughter, and she takes Husband, and has Issue, and dies before any Entry, the Husband shall not be Tenant by the *Curtesy*; and yet in this Case she had a Seisin in Law; but if she or her Husband had enter'd during her Life, she would have been Tenant by the *Curtesy*. *1 Inst. 29.*

The Wife must be actually seised, or the Heir shall not make himself Heir to the Wife; and this is the Reason that a Man shall not be Tenant by the *Curtesy* of a Seisin in Law. But if a Man, seised of an Advowson, or Rent in Fee, has Issue a Daughter, who is married, and hath Issue, and dies seised; and the Wife, before the Rent becomes due, or the Church becomes void, dies,



dies, in this Case the Husband shall be Tenant by the Curtesy, although the Wife had but a Seisin in Law. *Co. Lit.* 29.

A Man shall not be Tenant by the Curtesy of a bare Right, Title, Use, or of a Reversion or Remainder, expectant upon any Estate of Freehold; unless the particular Estate be determined by the Coverture; nor of a Copyhold Estate, if there be not a Custom to warrant it. *Cro. Eliz.* 361.

The Custom of a Manor was, That if any Man takes to Wife any Customary Tenant, and over-live his Wife, having Issue by her, he shall be Tenant by the Curtesy. A Man pleads he took to Wife *Anne*, to whom, during the Coverture, a Customary Tenement did descend, and had Issue, by this Custom he shall not be Tenant by the Curtesy; for *Anne* was not a Customary Tenant at the Time of the Marriage. 2 *Lenn.* Sir *John Savage's* Case.

A Man seised of Lands in Fee, hath Issue a Daughter, who takes Husband, and hath Issue, the Father dies, the Husband enters, he shall be Tenant by the Curtesy, altho' the Issue was had before the Wife was seised; and so it is, though the Issue had died in the Life-time of her Father, before any Descent of the Land. *Co. Lit.*

If a Woman seised of Lands in Fee, take Husband, and by him is big with Child, and in her Travel dies, and the Child is ript out of her Body alive, he shall not be Tenant by the Curtesy, because the Child was not born during the Marriage, nor in the Life-time of the Wife, but in the mean Time  
the

the Land descended; and he must alledge that he had Issue during the Marriage, in pleading. *Terms de Ley* 206.

A Man entitled to be Tenant by the Curtesy, makes a Feoffment in Fee upon Condition, and enters for the Condition broken, and then his Wife dies, he shall not be Tenant by the Curtesy; for though the Estate given by the Feoffment, be conditional, yet his Title to Tenant by the Curtesy was inclusively absolutely extinct by the Feoffment, the Condition not being annexed to it. *Co. Lit.* 30.

A Woman takes Husband, and hath Issue, Lands descend to the Wife, the Husband enters, and after the Wife is found an Idiot by Office, the Lands shall be seised by the King; for the Title of the Tenancy by the Curtesy, and of the King, happening at one Instant of Time, the Title of the King shall be preferr'd. *Co. Lit.* 30.

If a Man take a Wife seised of Lands and Tenements in Fee, and hath Issue, and after the Wife is Attainted of Felony, so as the Issue cannot inherit to her, he shall nevertheless be Tenant by the Curtesy, in Respect of the Issue which he had before the Felony, and which by Possibility might have inherited. But if the Wife had been Attainted of Felony before the Issue had, altho' he hath Issue afterwards, he shall not be Tenant by the Curtesy. *Co. Lit.* 40.

And if a Woman Sole seised in Fee, take a Husband, have Issue by him, and he is Attainted of Felony, and pardoned, he shall not be Tenant by the Curtesy, unless he have  
other

other Issue afterwards. *Keb.* And by *Bracton*, he that seeketh the Destruction of his Wife, shall not be Tenant by the Curtesy.

As to what the Wife may Claim of the Husband's, by Marriage, the Law is not very particular, till after his Decease.

If an Obligation be made to Baron and Feme, the Feme shall have it by Survivorship. *Roll. Abr.* 911. And if a Lease for Years be made to Baron and Feme, the Feme shall have the same by Survivorship. 43 *Ed.* 3. But if Goods are given to the Husband and Wife, the Wife shall not have them by Survivorship, but the Executors of the Husband.

If a Statute be acknowledged to Baron and Feme, they are Jointenants of it; and the Wife shall have all as Survivor. And if Baron and Feme recover Damages in a real Action, they may sue Execution jointly. 28 *Aff.* 45.

Baron and Feme make a Lease for Years, rendring Rent, if the Feme, after the Death of the Baron, agrees to the Lease, she shall have the Arrearages incurred during the Coverture. 7 *Ed.* 4.

If a Feme Leases for Years, reserving Rent, and afterwards takes Baron, who dies, the Feme shall have the Arrears accruing during the Coverture, and not the Husband's Executors.

And if a Feme Leases for Life, reserving Rent, and after takes Husband, after the Death of the Baron, the Feme shall have the Arrearages incurred during the Coverture, and not the Executor of the Baron, because this Issues out of the Freehold. 11 *R.* 2.

But

But if a Feme Leases for Life, reserving a Rent, and takes Husband; and during the Coverture, a Receiver receives the Rent of the Lessee (it does not appear by whom he was made Receiver; but it seems to be intended that he received it for the Baron and Feme) and after the Baron dies, the Executor of the Baron shall have the Writ of Account against the Receiver, and not the Feme; for this was a Chattel and Duty in the Baron, by the Receipt. 1 Roll. Abr. 342.

If a Husband die without making any Will, after his Debts, Funeral and other Expences are paid, the Surplusage of his Personal Estate, shall go one Third Part to the Wife of the Intestate, and the Residue be divided amongst his Children, and their legal Representatives. And if there be no Children nor Representatives, one Moiety shall be allotted the Wife, and the Residue shall go to the next of Kin; and if there be no Wife, but Children, the whole shall be distributed amongst the Children. Stat. 22 & 23 Car. 2.

By the Custom of *London*, the Wife shall have a Moiety of the Goods, whereof her Husband died possessed; yet the Husband, in his Life-time, may give away all the Goods; but by his Will, he cannot Prejudice her concerning her Part. Cro. Car. 345. But see Stat. 11 Geo. I.

As to the Husband's Estate in Lands, where a Man is seised of Lands or Tenements in Fee-simple, or Fee-tail general, or as Heir in Special Tail, and takes Wife, and dieth, the Wife, after her Husband's Decease, shall have her



her *Dower* therein, *viz.* the Third Part of such Lands or Tenements as were her Husband's at any Time, during the Coverture, whether she have Issue by her Husband or not; but the Wife must be Nine Years of Age at the Death of her Husband, or she shall not be endowed. *Co. Lit.* 30, 31.

And formerly there were five Kinds of Dower in this Kingdom, *i. e.* Dower at the Common Law; by Custom; *Ad ostium Ecclesiæ*; *Ex assensu patris*; and *De la plus Belle*.

Dower at Common Law, is a Third Part of the Lands or Tenements whereof the Husband was seised in Fee-simple, or Fee-tail, during the Coverture; and this the Widow is to hold, during her Life. It is assigned by the Sheriff, by the King's Writ out of Chancery, called, *De dote assignanda*; or by the Heir, &c. by Agreement among themselves. *Lit. Sect.* 37.

Dower by Custom is, that Part of the Husband's Estate, to which the Widow is entitled after his Death, by the Custom of any Manor or Place, so long as she lives Sole and Chaste; which Dower may be more than one Third Part; for in some Places she shall have Half the Land; as by the Custom of *Gavel-kind*; and in divers Manors the Widow hath the Whole, during her Life, called her *Free Bench*: Though, as Custom may enlarge Dower, so it may abridge it to a Fourth Part. *Co. Lit.* 33.

Dower *Ad ostium Ecclesiæ*, was an ancient Dower made and assigned by the Husband himself, immediately after the Marriage, at the Church Door, &c. who named such particular

ticular Lands of which his Wife should be endowed; and it was taken, that a Man could not, by this Dower, endow his Wife of more than a Third Part, but of less he might. And, as the Husband openly declared the Certainty of the Land, the Wife, after his Death, might enter into the Land of which she was endowed, without any other Assignment. *Lit. Sect. 39.*

Dower *Ex assensu Patris*, likewise was of certain Lands named by a Son, who was the Husband, with the Consent of his Father, and put in Writing as soon as the Son was married. And if a Woman, thus endowed, or *Ad ostium Ecclesiæ*, after the Death of her Husband, entered into the Land allotted her in Dower, she was concluded to claim any Dower, by the Common Law. *Lit. Sect. 41. 1 Co. Inst. 37.*

Dower *De la plus Belle*, was where the Wife was endowed with the fairest Part of her Husband's Estate. But of all the before-mentioned Assignments and Appointments of Dower, the two first are now only in Use. *Co. Lit. 38.*

The Husband must be sole seised of his Estate, to entitle Dower, and not in Jointenancy. Father and Son were Jointenants to them and the Heirs of the Son; and being both convicted of Capital Crimes, they were both hanged in one Cart; but because the Son, as was deposed by Witnesses, surviv'd, it appearing by some Tokens (*viz.*) the shaking his Legs, his Wife thereupon demanded her Dower, and had it. *Cro. Eli. 2. 502.*

And

And he is to be seised either in Deed or in Law, during the Coverture, or else she shall not be endowed, where Lands descend to the Husband; now before Entry, he hath but a Seisin in Law, and yet the Wife shall be endowed, although it be not reduced to an actual Possession; for it lies not in the Power of the Wife to bring it to an actual Seisin. *Co. Lit.* 31.

But it is not necessary that the Seisin should continue during the Coverture, tho' the Marriage must continue; for altho' the Husband aliens the Lands and Tenements, or extinguishes the Rent, &c. the Wife shall be endow'd.

And if Lands are exchanged by the Husband, for other Lands, the Wife may have her Dower in which Lands she will, as the Husband was seised of both; though she may not be endowed of the Lands given and taken in Exchange. *1 Co. Inst.* 31, 32.

If a Man, seised of Lands in Fee, takes a Wife of Eight Years old, and aliens his Land, and after the Wife attains Nine Years of Age, and then the Husband dies, the Wife shall be endowed here, though at the Time of the Alienation, the Wife was not Dowable; yet, as the Marriage and Seisin in Fee, were before the Alienation, and the Title of Dower is not consummate 'till the Death of her Husband, she shall be endow'd in his Lands. *Co. Lit.* 33.

Of an Estate-tail in Lands determin'd, a Woman shall be endowed in like Manner as a Man shall be Tenant by the Curtesy. She may be endowed of a Castle, used only for the

the private Habitation of the Owner. She shall be endowed of a Principal Mansion or Capital Messuage. Of the third Presentation to an Advowson; of Tithes; of a Common certain; of a Rent-Service, Rent-Charge, &c. And if a Man makes a Gift in Tail of Lands, reserving a Rent to him and his Heirs, and after the Donor takes Wife, and dies, the Wife shall be endow'd of this Rent, because it is a Rent in Fee, and may be perpetual. *Co. Lit.* 31.

But of an Annuity, that charges only the Person, and issues not out of any Lands or Tenements, she shall not be endowed. Also if the Freehold of Rents, Common, &c. were suspended before the Coverture, and so continue during the Coverture, she shall not be endowed of them. Of a Mill a Woman shall not be endowed by Meets and Bounds, in Common with the Heir; but she may be endowed of the third Toll Dish, &c. and she may be endow'd of the Third Part of the Profits of a Fair, the Third Part of an Office, Piscary, &c.

By *Magna Charta*, 9 H. 3. the Wife shall have her *Quarentine* (*viz.*) shall remain in the Capital Messuage of her late Husband (which is not a Castle for Defence of the Realm) by the Space of forty Days; within which Time her Dower ought to be assigned to her. *2 Inst.* 16.

In some Cases of Lands and Tenements, which are divisible, and which the Heir of the Husband shall inherit; yet the Wife shall not be endow'd. As if the Husband make a Lease for Life of certain Lands, reserving

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a Rent



a Rent to him and his Heirs, and he taketh Wife and dies, the Wife shall not be endow-  
ed ; neither of the Reversion, though it be  
within the Word *Tenements* ; because there  
was no Seisin in Deed or in Law, of the Free-  
hold, nor of the Rent ; for the Husband had  
but a particular Estate therein, and no Fee-  
simple. But if the Husband make a Lease  
for Years, reserving Rent, and takes Wife,  
the Husband dies, the Wife shall be endowed  
of the Third Part of the Reversion, by Meets  
and Bounds, together with the Third Part of  
the Rent. *Co. Lit.* 32.

A Wife shall be endow'd of a Third Part  
of a Reversion, Expectant upon a Term of  
Years ; and of the Third Part of the Rent  
reserved thereupon. *Lutw.* 729.

Where Lands are limited to the Use of *A.*  
for Life, Remainder to *B.* &c. for Years,  
Remainder to the Heirs Males of the Body  
of *A.* *A.* dies, this intervening Estate for  
Years is no Impediment to the Execution of  
the Estate-tail, nor shall be any Bar to the  
Wife's Dower. *Lutw.* 729.

A Woman recovers Dower of a Manor  
wherein were several Copyholds for Life ;  
and the Custom is, that *Dominus pro tempore*,  
may grant for one, two or three Lives, in  
Possession or Reversion. She keeps a Court,  
and grants one of the Copyhold Tenements  
to three for their Lives ; *Habendum* after the  
Death of *A. B.* the present Copyhold Te-  
nant thereof for Life, she afterwards dies,  
and then *A. B.* dies. And adjudged that this  
Grant was good, altho' it was not executed  
in the Life of the Tenant in Dower, who  
granted

granted it; for the Grant is warranted by the Custom. *Cro. Eliz.* 661.

The Widow Demandant in Dower, shall not recover any Damages, except the Husband died seised; and there she shall have Damages from the Time of his Death. *Dyer* 284.

A Woman deforced of her Dower, shall recover Damages, *viz.* the Value of her Dower, from her Husband's Death, by Stat. 20 *H.* 3. And the Wife is endowable where Lands were recovered against the Husband by Default or Covin. 13 *Ed.* 1.

If the Husband be an Alien, his Wife shall not be endow'd. *Co. Lit.* 31. And if a Man take an Alien Woman to Wife, and afterwards the Husband aliens the Land, and after that she is made a Denizen, and then the Husband dies, she shall not be endowed, because there was an absolute Disability; but it is otherwise if she be Naturalized by Act of Parliament. 1 *Roll. Abr.* 675.

A Jew born in England, took to Wife a Jew; the Husband was converted to the Christian Faith, purchased Lands, and enfeoffed another, and then died; on which the Wife brought a Writ of Dower, but was barred of it. *Co. Lit.* 31, 32.

The Wife of an Idiot, *Non compos mentis*, a Person outlaw'd, or one Attainted of Felony, shall be endow'd. And though the Issue cannot inherit the Lands which the Father had in Fee-simple, by the Attainder of Felony, the Wife shall be endow'd. But if the Husband alien his Land, and then the Wife is Attainted of Felony, now is she dis-

abled ; though if she be pardoned before the Death of the Husband, she shall be endow'd. *Co. Lit.* 31, 33.

Where a Husband is Attainted of Treason, she shall not be endow'd ; for the Attainder of the Husband interrupts the Title of Dower, which ought to be consummate by his Death ; and if the Husband obtains a Pardon, and dies, this doth not help it ; as it only extends to the Life of the Offender, but doth not take away the Attainder, by which she is barred to demand Dower ; and so it is, altho' the Lands be aliened before the Treason committed. *Dyer* 140.

If the Wife be divorc'd, *causa præcontractus, consanguinei*, or for Impotency, she shall not be endow'd. But a Woman divorced a *Mensa & Thoro*, she shall notwithstanding have her Dower, this being but a particular Divorce. *Co. Lit.* 235.

A Wife eloping from her Husband, and continuing with an Adulterer, loseth her Dower ; but if the Husband willingly, without Coercion Ecclesiastical, be reconciled to her, and permit her to live and cohabit with him again, she shall be endow'd. *Co. Lit.* 32. 2 *Inst.* 453.

If the Wife commit Adultery with a Man, though she do not continually remain with him, it is a Tarrying within the Stat. *West.* 2 *Co. Inst.* 2 Pt. 436.

A married Woman is taken away against her Will, if after she consents and remains with the Adulterer, without being reconcil'd, &c. she shall lose her Dower. And if the Wife go away with the Man, by Agreement  
of

of her Husband, if he commit Adultery with her, and she remain with him, without Reconciliation, she shall be barred of her Dower. 2 *Inst.* 435.

But if the Husband's Friends send him away from his Wife, so as the Wife knows not what is become of him, and they publish that he is dead, and afterwards procure the Woman to Release Marriage, and all Interest in him, as an Husband, and after this, by the Perswasion of the Friends of the Husband, he marries another Woman, who dies, and she takes another Husband, having no Notice of the first Husband's being alive, although the Wife live in Adultery, and tho' the first Husband was not out of the Realm, yet inasmuch as she did not leave her Husband *Sponte*, as the Statute says, but by Perswasion of the Husband's Friends, that he was dead; and it did not appear that she knew he was alive, this is not any Elopement to bar her of her Dower. 1 *Roll. Abr.* 680.

A Feme may be twice endow'd; as in Case of a Recovery by *Eigne* Title. 1 *Roll. Abr.* 684.

But the Wife shall not be endow'd of Lands and Tenements, which the Husband held jointly with another, at the Time of his Death; for the Jointenant claims all by Survivorship, which is above the Title of Dower; though Tenants in Common have several Freeholds and Inheritances; and their Moieties shall descend to their several Heirs, and therefore their Wives shall be endow'd. 1 *Inst.* 37.

When Lands are redeemed upon a Mortgage, the Wife of the Mortgagee shall not



have Dower. *Cro. Car.* 191. And if the Husband takes a Fine, *Sur Conuzance de Droit*, and renders again, though it was once the Husband's, yet the Wife shall not have Dower. *Co. Lit.* 31.

If the Widow accepts of Dower of the Heir, against Common Right, she shall hold it subject to the Charges of the Husband; but it is otherwise if she be endow'd by the Sheriff. And by Provision of Law, the Wife may take a Third Part of the Husband's Lands, and hold them discharged. 2 *Danv. Abr.* 672.

Detaining of Deeds and Writings concerning the Lands of which the Widow demands Dower, is a good Plea by the Heir, in Delay of her Dower. But if she delivers up the Evidences, she shall have Judgment. *Hob.* 199. If she denies the Detainer, and it is found against her, she loseth her Dower. *Ibid.*

If a Wife accept and enter upon less Land than the Third of the Whole, on the Sheriff's Assignment, she is barr'd to demand more. *Moor* 679.

A Devise to a Wife, *durante viduitate*, is no Bar to her Dower; unless it be expressed in the Will, That if she claims her Dower, she shall lose the Thing devised to her. *Lutw.* 735.

If an Estate be made to the Wife before Coverture, or afterwards (if after the Death of her Husband, she enter and agree to it) for Term of her own Life, or a greater Estate, this is a Bar of Dower, if it be expressed

pressed to be for a *Jointure*, or it may be averr'd. 1 *Inst.* 36.

The Wife had a Jointure made to her after Marriage, and she and her Husband levied a Fine *Sur Conusance de Droit*, &c. and aliened the Jointure, she shall not have Dower of the Residue of the Lands of her Husband, because her Time of Election is not come till she becomes Sole. *Dyer* 358.

The Husband being Tenant in Tail, the Remainder to his Wife for Life, the Husband made a Feoffment to the Use of himself and his Wife, for their Lives, for a Jointure, and died without Issue; this Jointure was pleaded in Bar of Dower. *Per Curiam*: It is no Bar, because the Wife is remitted, and in her first Estate, and the Jointure avoided. *Moor* 872.

To the making of a perfect Jointure, within the Statute 27 H. 8. six Things are required. *First*, The Jointure is to take Effect for the Wife's Life in Possession or Profit, presently after the Decease of her Husband. *Secondly*, That it be of Lands for the Term of her own Life, or a greater Estate. *Thirdly*, It must be made to herself, and no other for her. *Fourthly*, It is to be made in Satisfaction of her whole Dower, and not of Part of it. *Fifthly*, It must be expressed to be in Satisfaction of Dower. And *Sixthly*, It may be made either before or after Marriage. *Co. Lit.* 36.

But if the Jointure be made after Marriage, she may wave the same, and claim her Dower; except she enters and agrees to her Jointure. But if it be made before Marriage,

the Wife cannot wave it, and claim her Dower. And a Jointure was no Bar of Dower at the Common Law.

If a Man make a Feoffment in Fee of Lands or Tenements, either before or after Marriage, to the Use of the Husband for Life, and after to the Use of *A.* for Life, and then to the Use of the Wife for Life, in Satisfaction of her Dower, this is no Jointure within the Statute; because by the Limitation, it was not to take Effect in Possession or Profit presently after the Death of the Husband. And where an Estate is made to others in Fee-simple, or for the Wife's Life upon Trust, so as the Estate remains in them; altho' it be for her Benefit, and by her Assent, and by express Words be in full Satisfaction of her Dower, yet this is no Bar of her Dower. The Estate limited, must be either in Fee-tail, or for Term of her own Life; for an Estate for the Life or Lives of any others, or for an hundred Years, &c. if she live so long, without such Limitation, is no Bar of her Dower. *Co. Lit.* 36.

A Father made a Settlement of Lands, to the Use of himself for Life, and afterwards to the Use of his Son and his Wife, for their Lives, for the Jointure of the Wife. Adjudg'd, that it was no Jointure to bar the Wife of her Dower; for it might not commence immediately after the Husband's Death, who might die in the Life-time of the Father. *2 Cro.* 489.

The Duke of *Somerset* purchased Lands to him and the Dutchess his Wife, and to the Heirs Males of their two Bodies; this was a good

good Jointure within the Intent of the Act. *Dyer* 96. And an Estate to the Wife for Life, upon Condition, is a good Jointure within the Act, if the Wife, after the Death of the Husband, accept it ; but if the Condition bind her to any unreasonable Thing, she may wave it. 4 *Co.* 3.

An Estate in Fee-simple, convey'd to the Wife for her Jointure, and in Satisfaction of Dower, is a Jointure within the Equity of the Act 27 *H.* 8. for this is a competent Livelihood for the Wife of an Estate of Freehold to take Effect presently after the Death of the Husband, for her Life and more. 4 *Co.* 3. *b.* But *Mich.* 28 & 29 *Eliz.* it was agreed that an Estate in Fee, made by the Husband to the Wife, is not a Jointure within 11 *H.* 7. for that any Collateral Heir might inherit it ; and the Statute was made for the Benefit of the Issues between them.

Covenant to stand seised to the Use of a Man's Brother and his Wife, for their Lives, is a Jointure within the Statute of 11 *H.* 7. as given by the Ancestor of the Husband ; and it is within the Words of 27 *H.* 8. *Plowd.* 307.

The Bishop of *Exeter*, in Consideration of faithful Service done by *A. B.* gives Lands to him and *S.* his Cousin, in Tail ; and a Marriage was then intended to be had between them, which afterwards was solemniz'd accordingly ; this was held no Jointure within the Stat. 11 *H.* 7. for it was not a Gift by the Husband, nor any Ancestor of the Husband ; and the Consideration of Service is  
not



not what the Law requires. *Telv. 101. Brownl. 137.*

A Conveyance by the Husband, or his Ancestor, in Consideration of a Marriage, though it be joined with a Consideration of Money, is a Jointure within the Statute. As if *A. B.* seised in Fee, by Indenture, covenants with *C. D.* as well in Consideration of 500*l.* paid by *C. D.* as of a Marriage between *L.* his only Son, and *A.* the Daughter of the said *C. D.* to convey the Land to the Use of the said *L.* and *A.* and the Heirs of the Body of the said *A.* to be begotten, &c. *Cro. Jac. 474.*

But where a Father of the intended Wife, in Consideration of Marriage, &c. covenanted to assure Lands to the Husband and Wife, his the Covenantor's Daughter, and the Heirs of her Body, &c. this hath been held no Jointure, within the Meaning of the Stat. 11 *H. 7. c. 20.* because it is an Advancement of the Woman by her own Father; and not coming from the Husband, or his Ancestors. 2 *Cro. 264. 2 Lill. Abr. 80.*

If Lands are conveyed to a Woman before Marriage, as Part of her Jointure, and after Marriage more Land is conveyed to her, for her full Jointure, and in Satisfaction of all Dower, and after the Husband dies; in this Case, if the Woman waves the Land convey'd to her Use after Marriage, she shall have the Land convey'd to her before Coverture, and her Dower also in the Residue; for Land conveyed to the Wife, for Part of her Jointure, or in Satisfaction of Part of her Dower, is no Bar for the Incertainty. 3 *Co. Rep. 1, 5.*

Some are of Opinion, that no Estate devised by Will, can be a Jointure within 27 H. 8. for by that Act, every Jointure is intended to be made before or during the Coverture; and a Devise takes not Effect 'till after the Death of the Husband. But in *Leak and Randal's Case*, it was adjudg'd that if a Man devise Lands to his Wife for her Life, or in Tail, &c. for her Jointure, and in Satisfaction of Dower, this a Jointure within the 27 H. 8. though a Devise cannot be averr'd in Satisfaction of Dower, if it be not so expressed in the Will. *Co. Lit. 36.*

If a Jointure be made to a Wife, of Lands before the Coverture, and after the Husband and Wife alien those Lands, she shall not be endow'd of any other Lands of her Husband. *Co. Lit. 36.* Acceptance of Dower by Deed indented, shall conclude the Wife of her Right by Jointure.

After the Death of the Husband, the Wife may enter into her Jointure Lands, and is not driven to a Real Action, as she is to recover Dower by the Common Law. And upon a lawful Eviction of her Jointure, she shall be endowed according to the Rate of her Husband's Lands, whereof she was Dowable at Common Law. 1 *Co. Inst. 37.*

A Wife's Jointure shall not be forfeited by the Treason of the Husband. Though Feme Coverts, committing Treason or Felony, incur a Forfeiture of their Jointures. If a Jointress makes any Alienation of the Estate settled on her in a Jointure, by Fine, Feoffment, &c. with another Husband, it is a Forfeiture of the same; but if the Lands settled

ted are not a Jointure by Law, it is otherwise. Also if she Suffer a Recovery covinously to bar the Heir, the Heir may enter presently on the Lands, where it is a Jointure within the 11 H. 7. *Plowd.* 42. 2 Leon. 206. 2 *Nelf. Abr.* 1040.

By bringing a Writ of Dower for her Thirds, the Wife waves the Benefit of Entry into Lands, so as to hold them in Jointure. And if a Woman conceals her Jointure, and brings Dower, and recovers it, and then sets up her Jointure, she is barr'd thereof. 3 *Rep.* 5. *Cro. Eliz.* 128.

A Man enters into Bond to a Woman, with Condition, that if he married her, his Executors or Administrators should pay her 500*l.* after his Death; he marries her and dies, here this Bond could not be sued during his Life; but the Cause of Action grew only after the Death of the Husband, it being that his Heirs, Executors or Administrators should pay the Wife 500*l.* if she survived her Husband, which she did, and the Bond remains good to the Wife. *Cro. Jac.* 572.

In Consideration that the Plaintiff would marry the Testator, he promised to leave her worth 500*l.* and it was mov'd in Arrest of Judgment, that this Personal Contract was determin'd by the Marriage. As if a Release had been made; or as where the Debtor takes the Debtee to Wife, the Debt is determined. But *per Curiam*, It never was a Duty in the Life of the Testator, and therefore could not be released by him. *Hob.* 216.

And

And if a Man and Woman enter into Articles to each other, and the Man gives Bond to a third Person to perform the Articles; the Man and Woman afterwards marry, whereby the Articles become void; yet the Bond remains good, and the Husband may be sued upon it. *Cro. Car.* 376.

A Man and a Woman agree to marry, and they enter into a Deed in Writing, that the Feme should dispose of the Rents of her own Estate, during the Coverture; they marry, the Husband receives the Rents, and dies; and the Feme brings her Bill in Chancery against the Executors of her Husband, to pay her the Money received by the Baron. But it was decreed that this Agreement, made by the Baron, before Marriage, was by the Marriage determined. *Chanc. Rep.* 21, 217.

A Wife assigns her Term before Marriage in Trust for herself, and the Husband, without the Trustees, mortgages the Term, this is void; neither can the Husband forfeit it by Outlawry or Felony. But if it had been an Assignment made by the Husband after Marriage, in Trust for his Wife; this is a voluntary Settlement, and fraudulent against Purchasers. *Chanc. Rep.* 225.

A Widow being about to marry; to prevent the Husband's Disposal of her Land, conveyed it to Trustees, who join'd with her Husband in a Sale of the same; she commenced a Suit in Chancery, and the Court decreed that the Purchaser should reconvey to her, though a valuable Consideration was given for the Estate. *Tothil* 43.



*Of the Privileges of Feme Coverts,  
and their Power, in Respect of  
their Husbands, and all others:  
Of Husband and Wife, in what  
Actions they are to join, and  
how far they are chargeable, &c.*

**A**LTHOUGH a Woman parts with great Powers, as to the Disposition of her Estate, by Marriage, and she is *sub potestate viri*; yet many particular Privileges are belonging to married Females.

In Case of Banishment of the Husband by Parliament, a Feme Covert may act as lawfully as the Husband might, were he not dead in Law. Stat. *Westm.* 2. But my Lord *Coke* makes a Diversity, where the Banishment is Perpetual, and where only Temporary. *Co. Lit.* 133.

Regularly no Laches shall be accounted to Feme Coverts, for not Entry or Claim to avoid Descents; though Laches will be accounted to them for Nonperformance of a Condition annexed to the Estate in the Land; for if a Feme be enfeoffed, either before or after Marriage, reserving Rent; and for Default of Payment a Re-entry is made; in this Case the Laches of the Husband shall disherit the Wife for ever. 1 *Inst.* 246.

And

And Lapse shall incur against a Feme Covert, if she does not present to a Church within six Months.

A Woman (although the Custom be to elect by Houses) may not be a Constable. *Cro. Car.* 388. And although she is imprisonable for Force, yet Women in Prison, by Reason of their Pregnancy, have been released upon Bail. *Cro. Jac.* 356. *Hob.* 97.

When a Feme Covert dies, no Mortuary shall be paid; but if a Woman survive her Husband, and live in a House for a Year sole, with the Government of a Family, and after dies, she shall pay a Mortuary. *Linwood f.* 7.

If the Husband be solely impleaded *in Banco*, and he comes with his Wife to the Court to defend the Suit, and both are arrested, there they shall have Privilege; tho' if the Husband have Privilege to be sued in Chancery, it shall not serve for his Wife.

*A. B.* a Clerk in Chancery, married a Feme, who was Executrix to her late Husband; Debt was brought against them in the Common Pleas; *A. B.* brings a Writ of Privilege to have the Action removed into Chancery; the Writ was disallowed by the Court, and the Defendant rul'd to answer over, because the Wife was joined in the Action with the Husband; *aliter*, where the Wife comes in Aid of her Husband to follow the Suit. *Dyer* 377.

A married Woman may make a Testament of Goods, and an Executor, by the Assent of her Husband. She cannot make an Executor without such Assent; and the Administration

tion of her Goods of Right, appertains to her Husband. 4 Co.

But a Feme Covert Executrix, may make an Executor of the Goods which she has as Executrix, without the Assent of her Husband; and in such Case Administration appertains not to the Husband; and what she had as Executrix, she had *en autre Droit*, and no other Interest in the same. *Mich. 8 Jac.* she may make her Husband Executor of the Goods which she hath, as Executrix, if he will accept it. 4 H. 6.

By Law, the Apparel of the Wife, is called *Bona Paraphernalia*. The Wife by the Common Law, ought to have her necessary Apparel after the Decease of the Husband, and not the Husband's Executors. And if the Husband deliver to his Wife, a Piece of Cloth to make a Garment, and dies; altho' it was not made up in the Life of the Husband; yet the Wife shall have it, and not the Executor, it being delivered to her to that Intent: But against the Debtee of the Husband, the Wife shall have no more Cloths than is convenient. *Mich. 40 & 41 Eliz.*

A Chain of Diamonds and Pearls, being worth about 400 l. usually worn by a Woman who was the Daughter of an Earl in *Ireland*, and a Baron of *England*, and the Wife of a Knight, and the King's Serjeant at Law, shall be *Bona Paraphernalia*; so that the Husband cannot devise them from the Wife. *Cro. Car. 343.* Lord *Hastings* and *Douglas*. Judge *Crook* thought the Wife should not have them as *Bona Paraphernalia*; because they were not necessary for her, but only convenient.

A Feme Covert, in our Books, is often compared to an Infant, both being Persons disabled in the Law; but they differ very much: An Infant is capable of doing any Act for his own Advantage, so is not a Feme Covert. A Lease made by an Infant, without Rent, is not void, but voidable: It is void in the Case of a Feme Covert. If a Feme Covert enter into Bond, *Non est factum* may be pleaded to it; but if an Infant enter into Bond, he must plead the special Matter, that he was under Age.

An Infant may bind himself for Conveniences and Necessaries for himself and Family, and the Law gives him Authority so to do; a Feme Covert cannot do so without the Consent of the Husbaud, because thereby she is to bind another that hath all the Property in her Estate: And yet a Feme Covert is a Favourite of the Law. 2 *Inst.* 18.

And though our Law makes the Woman subject to the Husband, yet he may not beat her, but she may pray the Peace against him; and he shall find Surety that he shall neither do nor procure to be done to her, any Bodily Damage, otherwise than appertains to the Office of a Husband, and for lawful Correction. *F. N. B.* 80. *Dalt.* 284.

Some Authors mention that a Husband may give his Wife reasonable Correction and Chastisement, and by the Common Law, she can have no Action; but if a Husband enter into an Obligation for the Duress of his Wife, the Bond shall be void. *Sid.* 123.

A Woman by Marriage with a Nobleman, becomes thereby Noble; and if she be No-



ble by Descent, she loses not her Nobility by Marriage with a private Gentleman.

If a Queen Dowager marry any of the Nobility, or under that Degree, she loseth not her Dignity. And *Catharine*, Queen Dowager of *England*, married *Owen ap Meredith*, ap *Theodore*, &c. and yet she, by the Name of *Catharine* Queen of *England*, maintained an Action of Detinue against the Bishop of *Carlisle*. 2 *Inst.* 50.

But at a Parliament, held 6 H. 6. it was enacted, that no Man shall contract or marry himself to any Queen of *England*, without a special Licence or Assent of the King, on Pain to lose all his Goods and Lands. 2 *Inst.* 18.

The Queen Consort, or Queen Dowager, in Case of Treason, shall be tried *per Pares*, as Queen *Anne*, Wife of King *Henry VIII.* was in the *Tower* of *London*, before the Duke of *Norfolk*, Lord High Steward. *Pasch.* 22 H. 8.

The Queen of *England* has a certain Prerogative, as she is the King's Wife: She ought not to find Sureties, as a Common Person ought to do. She shall not be amerced; she shall pay no Toll; in Case of a *Quare Impedit* brought by her, *Plenarty* is no Plea. And if the Queen's Tenant alien any Part of the Tenancy to one, and another Part to another, the Queen may distrain any one Part for the Whole, as the King may do. *Co. Lit.* 133.

The Wife of the King of *England*, is an exempt Person from the King, and capable of Lands or Tenements of the Gift of the King, &c. and may sue and be sued without the King, as a Feme Sole.

And that the Queen, as Feme Sole, may give and take solely without the King, appears by an ancient Charter made before the Conquest, which runs thus :

‘ I Ethelswith, Queen of the Mercians, with  
 ‘ Consent of my Eldermen, do give, by Grant,  
 ‘ to Cawolf, my most faithful Servant, a cer-  
 ‘ tain Piece of Land, being Part of my peculiar  
 ‘ Power, that he may have and possess, at his  
 ‘ Pleasure, as long as he lives ; and after his  
 ‘ End and Limit of his Days, he may leave it  
 ‘ to whomsoever he will, for everlasting Power,  
 ‘ and perpetual Inheritance. And We charge  
 ‘ all secular Powers, in the Name of God the  
 ‘ Father, Son and Holy Ghost, to observe the  
 ‘ aforesaid inviolably. These Witnesses subscri-  
 ‘ bing and consenting thereunto.

Etheldred, King of the West Saxons,  
 Burghred, King of the Mercians.

Ethelswith.

The Queen may inform, by her Attorney, in the Chancery, by *English* Bill, to have a Decree made in her Court confirmed. But a Protection may be allowed against the Queen, though not against the King ; neither shall the Queen be sued by Petition, but by a *Præcipe*.

Next to Privileges of Feme Coverts, I come to *Actions* brought by Husband and Wife ; and in what Actions they are to join.

And *first*, Baron and Feme are to join in Actions due to the Feme before Coverture. *Moor* 422.

For entring and breaking the Wife's Close, or Battery or other Tort done to the Wife, they must join; but if the Wife dies, the Action dies with her. *Trin.* 4 *fac.*

Trespass, *Quare clausum fregit*, by Baron and Feme. *Pollixfen*, Ch. Justice, was of Opinion, that the Wife ought not to be join'd with him, though it was her Land. *Vent.* 195. But *Brownlow* says, the Action will survive; and they have Election to join, or bring it alone.

In Trespass and Assault, Baron and Feme may say, *Ad dampnum ipsorum*, tho' a Feme Covert can have no Damages. 1 *Sid.* 387.

Baron and Feme bring an Action for the beating of himself and his Wife; the Writ shall abate; for the Wife cannot join for the Battery of her Husband, and the Husband cannot have Judgment alone, because his Wife is join'd with him in the Writ. But the Baron and Feme shall have Judgment for the Battery of the Wife; for this is but one Judgment. *Co. Inst.* 326. 1 *Roll. Abr.* 782.

And Baron and Feme brought Trespass and Battery for beating them both; upon Not guilty pleaded, the Verdict was for so much Damages for beating the Baron, and so much for beating the Wife. On Motion to arrest Judgment, the Court said the Plaintiff might Release Damages for beating of himself, and take Judgment for the other. 1 *Vent.* 328.

Trespass and Assault against Baron and Feme, for the Assault of the Feme, the Baron

ron and Feme defend the Force, &c. and the Baron says, that his Wife is not Guilty, this is ill ; for the Husband only pleads here, and not the Wife ; and it should be *Dicunt*, that she is not guilty. *Cro. Car.* 594.

The Husband shall not have an Action singly by himself, for the beating of his Wife, unless he lay a *Per quod consortium amisit*, in his Declaration. And if a married Woman be assaulted and beaten ; if the Husband is thereby deprived of her Conversation, he alone may commence an Action of Trespass. *3 Co.* 113.

For an Injury done to the Wife only, Action cannot be maintained by the Husband without her ; but for a Loss and Injury done to the Husband, in depriving him of the Conversation and Service of the Wife, he alone may bring an Action ; and these Actions are laid for Assault, and detaining the Wife, *Per quod consortium amisit*, &c. *Cro. Car.* 538.

If a Feme Covert slander any Person, the Husband and Wife are to be sued for it. But for scandalous Words against a Man and his Wife, the Husband may prosecute one Action alone for his own Slander, and afterwards join in an Action with his Wife for hers. *Styl. Rep.* 113.

The Husband Sole shall have an Action for Words spoken against his Wife ; and if the Wife be joined with him, Judgment shall be arrested. *Sid.* 346. but the Words must be such as are Actionable, in Respect of Collateral Damages.



Words of a Wife were, That she is a Bawd, and keeps a Bawdy-house; upon these Words an Action was brought by Baron and Feme, *Ad Damnum ipsorum*. And it was moved first, That it is the Husband, and not the Wife, that keeps the House; and therefore the Speaking of the Wife can be no Damage to the Husband. Admit they are actionable, the Husband only ought to bring the Action; because the speaking of the Words is only to his Damage. But by the *Chief Justice*, the Wife is to be indicted for the keeping of a Bawdy-house, she only being damnified by the Words; and the Husband for Conformity only ought to join in the Action. *March. Rep. 212.*

To say another Man's Wife is your Whore, no Action lies at Common Law, but in the Spiritual Court. But to say of a Woman she is a Whore, and her Children, which she had by a former Husband, are another Man's Bastards, the Words are Actionable, tho' the Children cannot be Bastards in Law, but in Reputation they may; and it is Loss of Marriage. *Sid. 61. Cro. Car. 322.*

To call a Woman, in Communication of Marriage, Bursten Bellied Queen; and say her Belly hangs down to her Garters, adjudged Actionable. *Lit. Rep. 193.*

A Man calls another Whore-master, or a Woman Whore, no Action lies, unless it be in *London*, by the Custom of the City. But to say that a Woman is with Child, or that a certain Person hath had the Use of her Body, &c. whereby she loses her Marriage; for this

this special Damage Action lieth. 1 *Danv. Abr.* 81. 2 *Salk.* 696.

And if a Person say to a Man, Thou art a Whore-master, thou hast lain with such a Woman, and hadst to do with her against a Chair; *per quod*, &c. Judgment *pro Quer. Cro. Jac.* 323.

Thou hast sought the Blood of my Husband, and wast his Death; for hadst thou been an honest Woman, he had been still alive; and avers *in Faeto*, that her Husband was killed; the Words are Actionable. *Cro. Jac.* 306.

The Defendant's Wife spoke of the Plaintiff's Wife these Words, Thou are a thievish Woman, and has stolen my Faggots. It was moved that the Words are not Actionable; for a Feme Covert hath not any Goods that can be stolen. But *per Curiam*, the Action lies; for she charges her with Felony; and it is no Matter whose Goods they are. *Cro. Jac.* 600.

To say of a Woman, Thou art a Witch, no Action lies; there must be an alledging that she had done some Act. But to say of a Woman, Thou are a Witch, and I will prove thee a Witch, Action lies. *Cro. Jac.* 478.

In Action upon the Case, against Baron and Feme, for Words spoken by the Wife, the Baron is to be found Not guilty, because nothing is laid to his Charge; and if they are both found Guilty, as to the Husband, the Verdict is void, but good against the Wife alone. 3 *Bulst.* 60.

But when Judgment is given against Baron and Feme, for Words spoken by the Feme, both must be *in mia*. *Hob. 127.*

The Defendant's Wife said scandalous Words of the Plaintiff's Wife; and he brought his Action against Baron and Feme, and they pleaded *Quod ipsi non sunt Culpabiles*, and good; for the Baron and Feme are charged as for the Wrong of the Wife. *Cro. Car. 417.*

Where Baron and Feme sue for personal Things, they shall not join, unless such Things are in Action; and then it is in the Election of the Husband to join his Wife or not. But where they have a joint Interest, they must join. *March 47.*

In Avowry for Rent, in the Right of the Wife, they ought to join; as if Rent be due to the Wife before Coverture, she and her Husband must join in the Avowry. *4 H. 6.*

Action of Debt upon the Statute *2 Ed. 6.* by Baron and Feme, for not setting forth of Tithes, the Baron and Feme may join, if the Baron be seised in Possession of the Rectory, in the Right of his Wife, or in Jointure. *Moor 912.*

Baron and Feme join in Covenant, and the Action was brought against them both, and it abated, because it shall charge the Husband only. *24 Ed. 3.*

If a Lease be made by Baron and Feme, of the Wife's Land, rendring Rent, the Baron may bring an Action alone for the Rent; and *Quære*, if they may join. *2 Bulst. 21.*

A Feme having Rent for Life, takes Husband, the Baron shall have an Action of Debt

for Rent incurred, during the Coverture, after the Death of Feme; and if the Lessee for Life rendring Rent, takes Husband, and dies, the Husband shall be sued for Rent in Arrear, because he took the Profits of the Lands. 10 H. 6.

If a Lease for Life be made to one, the Remainder to Baron and Feme, and to the Heirs of the Baron, Baron and Feme may join in Action of Waste. 17 Ed. 3. So if the Baron and Feme, during the Coverture, make a Lease, and Waste is committed.

In Action of Forcible Entry on the Wife's Land, she was joined with her Husband. 2 Vent. 195. In *Ejectione firmæ*, the Wife shall join. Lit. Rep. 285. Baron and Feme may join in a Writ of *Rescous*; and shall join in *Detinue*, for Charters concerning the Inheritance of the Wife; for the Wife shall have them again when recover'd. 15 Ed. 4. 38 H. 6.

If Goods are bail'd to a Feme Sole, or if she finds Goods, and after marries, *Detinue* must be brought against both. Co. Lit. 351.

Trover before Marriage, and Conversion after, was brought by Husband and Wife; and adjudged good, with or without the Wife; for the Trover gives the Inception of the Action to the Wife, although the Conversion is the Perfection of the Cause. 2 Lev. 107. Trover against Baron and Feme held good. Latch 126.

Trover was brought against Husband and Wife, and a Possession and Conversion laid in them both, and held to be good; because this Action is not grounded upon any Property



perty supposed in the Defendants, but in the Possession only; and the Point of the Action is in the Conversion, which is a Tort where-with a Feme Covert may be charg'd; for she may be a Trespassor, and convert Goods to the Use of her Husband, or of a Stranger; although she cannot convert them to her own Use. *Telv.* 165. *Noy* 126. But *Cro. Car.* 254. *contra.*

Trover is brought by Baron and Feme, and laid *Ad Damnum ipsorum*, this is naught; because Husband and Wife cannot be Jointenants of Goods, the Law transferring, in Point of Ownership, the whole Interest to the Husband, and he must bring the Action. *Telv.* 165.

Trover against Baron and Feme, supposing the Conversion to be to their proper Use; and for this Cause reversed, because it is the Conversion of the Baron only, for they are only to his Use; and though they may be charged with a joint Battery or Imprisonment, it cannot be so for Goods converted. *Cro. Jac.* 161.

Action of Trover was brought by the Husband, for Money which the Wife had lost at Cards, and Judgment was for him, tho' she play'd in his Absence; and yet he may have Action for the Money won by her. *Trin.* 6 *Jac.* *Ray* and *Stephens.*

An Action lies against the Husband for Goods delivered to his Wife, if she usually bought Goods, and her Husband paid for them; or if it can be intended or proved that these Goods came to the Husband's Use. 1 *Lev.* 4, 5.

By

By the Custom of *London*, where the Feme Trades by herself in one Trade, with which her Husband doth not meddle, and buys and sells in that Trade, there the Feme shall be sued, and the Husband named only for Conformity; and if Judgment be given against him, Execution shall be sued only against the Feme. *Cro. Car.* 68.

A Feme buys Things for her necessary Apparel, it shall bind the Husband. *1 Sid.* 120. So of necessary Diet, Lodging, &c. *Aleyn* 61. And where a Feme makes a Contract to the Use of her Husband, and it comes to his Use, it shall bind him. *20 H.* 6.

Where Feme Coverts are allowed by their Husbands to be House-keepers, and they have used to buy Things upon Trust for the Household, the Husband shall be charged for them; for in such Respect the Wife is as a Servant. *1 Sid.* 109. *Scot* and *Manby's* Case.

But if a Woman departs from her Husband, without his Consent, and the Husband prohibits several Persons from Trusting her; if afterwards, one who had Notice, trusts her with Necessaries, the Husband shall not be charged: And though after her Departure, she desires to cohabit with her Husband, which he refuses. *1 Sid.* 109, 110.

Although a Wife is very lewd, if she lives with her Husband, he is chargeable for all Necessaries for her, because he took her *for better for worse*; and so he is if he runs away from her, or turns away his Wife, in which Case he gives her Credit where-ever she goes. But if she runs away from her Husband, then as soon as such Separation is Notorious, who-  
ever

ever trusts her doth it at his Peril, and the Husband is not liable, unless he take her again. 1 *Salk. Rep.* 119. *Mod. Case* 171. *Case of Robinson and Gosnold.*

By *Holt*, Ch. Justice, while a Man and his Wife live together, the Husband shall answer all Contracts of hers. And if a Wife cohabit with her Husband, and by it gain a Credit, though she depart without Leave of her Husband, and come to *London*, and there become in Debt, the Husband shall be charged till Notice is given of her Elopement; for it shall be intended to be with the Consent of the Husband. But after Notice, the Husband shall not be charged, without his Assent appears. *Mich. 4 W. & M. Skinn. Rep.* 323.

If a Baron and Feme separate by Consent, and the Wife hath an Allowance for Clothes, &c. Tradesmen that deal with her, Trust her on her own Credit, where it is commonly known; and in such Case a personal Notice is not necessary. And as to Notice on an Elopement, &c. it is said, the putting the Wife in the *Gazette*, or other News Papers, is no legal Notice to Persons in general, not to trust her; though Personal Notice to particular Persons given by the Husband, will be good not to be chargeable to them. 1 *Vent.* 42. 1 *Sid.* 109. 1 *Salk.* 116.

A married Woman runs in Debt to a Tradesman, by taking up divers Goods, and she pawns the Goods before they are made into Clothes, her Husband shall not be compelled to pay for them, because they never came to his Use; but it is otherwise if they were made up and worn, and then pawned  
for

for Money, then he shall be charged. *Pasch. 2 Ann. Etherington ver. Parrot.*

If a Feme Sole be indebted to *A. B.* and afterwards marries, this Debt is become by the Marriage the Debt of the Husband and Wife, (*viz.*) the proper Debt of the Wife, and the Debt of the Husband in Right of his Wife; and the Wife must be sued for this Debt jointly with her Husband; and if the Husband die pending the Suit, yet is not the Debt gone; for she may be sued for it after the Death of her Husband; but if the Husband be not sued for this Debt, during the Life of his Wife, he can never be sued for it after her Death. *Trin. 24 Car. B. R.*

If there be a Judgment in Debt against a Feme Sole, who marries and dies, the Baron shall not be charged therewith. But where there is a Judgment against a Feme, who marries, and the Judgment is had upon *Scire facias*, against Baron and Feme, and then the Feme dies, a *Scire facias* will lie against the Baron, to shew Cause why Execution should not go against him upon the first Judgment; for upon the Award of the Execution it became his Debt. *3 Mod. 186.*

A Woman who was married, enters into a Bond, as a Feme Sole, and she is afterwards sued as a Feme Sole, and pleads *Non est factum*, she may give in Evidence, her Coverture at the Time of the Sealing of the Bond, and that shall make the Bond void; for a Feme Covert cannot do any Act to oblige herself. *5 W & M.* But a Feme, tho' not bound by her Agreement during Coverture,  
yet



yet acting according to the Agreement, when a Widow, is bound by it. *Chanc. Rep.* 255.

If a Feme Sole owe me Money, and takes Husband, I may have an Action of Debt against them, and count that they owe me so much, without saying *Dum sola fuit*, &c. for by the Marriage this is made the Debt of the Husband, during the Coverture. 1 *Bulst.* 136.

Baron and Feme cannot be joined in one Action of Debt against them for several Contracts, the one made by the Wife *dum sola*, the other by the Husband; as was *Revel* and *Gray's* Case. *Revel* brought Action of Debt against *Gray* and his Wife, for 3 *l.* 18 *s.* and declared for 39 *s.* upon the Wife's Contract *Dum sola fuit*, and the other 39 *s.* upon an *Insimul computaverunt* with *Gray* the Husband, after Issue joined, and *Nil debent*, and Verdict *pro Quer.* Judgment was stay'd. *Hob.* 184.

Where a Feme Covert is subpœned to give Evidence, and her Charges are tender'd to her, if she neglects or refuses to appear, an Action lies against her Husband and her upon the Stat. 5 *Eliz.* 1 *Leon.* 112.

An Action is brought against a single Woman, who pending the Action marries; the Plaintiff shall, notwithstanding the Marriage, proceed to Judgment against her, and take her in Execution, by the Name of Single Woman, according as the Action was commenced against her. *Trin.* 12 *W. B. R.*

An Action is brought against a Feme Sole, pending the Action she married *A. B.* Judgment

ment was given against her, and a *Ca. Sa.* sued out thereupon, upon which she was taken: And resolved, That where a Woman is found Guilty, and before Judgment takes Husband, the *Ca. Sa.* shall be sued out against her, and not against her Husband. *Cro. Jac.* 323.

A Man and his Wife (in her Right) recovered in Debt, the Wife being dead, the Husband may sue out a *Scire facias*, and have Execution; because by the Judgment it became his own Debt. *1 Mod.* 179. *Cro. Car.* 208.

A Feme Sole recovers Debt, and takes Husband, and Execution is upon that Judgment adjudged to the Husband and Wife; then the Wife dies, and the Husband sues out a *Scire facias* in his own Name; and the Court seemed to be of Opinion that he well might; for that by this Awarding of Execution, the Husband shall have the Debt by Survivorship; and if the Husband should die before Execution, the Administrator of his Wife should have it. *Goodyear's Case.* 9 *W. 3. B. R.*

Feme Covert Executrix, can do nothing to the Prejudice of her Husband. *5 Rep.* 27. She cannot sue without her Husband; and in Cases as to Matters of Record, the Husband ought to be a Party, but not as to Matters of Fact. *16 H. 7.* But where a Feme Covert was Executrix, and Judgment against the Husband and her, upon a *Scire feci*, it was objected, that the Feme could have no Goods, and therefore the Judgment was void. But it was held good; for the Husband being charged in the Right of his Wife, Judgment shall

shall be against both. And in this Case, if the Husband had survived the Wife, he shall be charged. *Cro. Car.* 519.

Action of *Account* was brought against a Feme Covert Administratrix, and her Husband in *B. C.* and Judgment given against the Defendants, *Quod computent*, the Feme dies, and the Baron brings a Writ of Error in *B. R.* to reverse this Judgment. *Per Curiam*: Writ of Error lies not, because the Record cannot be removed by it; for that would disturb the Proceedings in the Common Pleas, and the Party would have no Fruit of his Suit, if the Record were removed, nor any Remedy to recover the Money due to him; yet the Original is determined by the Judgment given, *Quod computent*, and a *Scire facias* lies by the Executor, as the Case here is. *Stile* 290.

Trespas was brought for mean Profits. The Count was against Baron and Feme for Trespas done *cum averiis suis*, and saith not whether they were their Beasts after, or hers before Coverture. *Per Curiam*: It is good enough after a Verdict; for she may be Executrix, and so by Marriage they may be his Goods; but then the Actions should have been several, according to their several Capacities. And if the Goods of an Executrix, after taking Husband be stole, the Indictment must be for taking of his Goods. 1 *Keb.* 944. *Collingwood* and *Bishop*.

An Action being brought by a Man against Sir *Thomas Pope*, and *A.* his Wife, as Daughter and Heir of Sir *Thomas W.* hanging the Writ, *Pope* died. *Hobart* was of Opinion, that the Writ shall not abate. But if an  
Executrix

Executrix brings an Action in her own Name, and the Name of her Husband, and pendant the Writ, the Baron dies, the Writ shall abate. *Winch p. 102.*

The Feme pending a Writ against her, takes Husband, this does not abate the Writ; but the Recovery against her upon the first Writ is good. Though if after the Original Process sued, and before the Return she take Husband, this shall abate the Writ. *2 Roll. Rep. 53.*

A Feme makes a Letter of Attorney to the Plaintiff, to recover a Debt, and then marries, this is not any Countermand or Revocation of the Suit, and the Writ is not abated but only abatable. *1 Leon. 186.*

A Writ brought against Baron and Feme, abates by the Death of the Feme, though after Verdict. *Hob. 129.* And the Writ shall abate if the Wife be put before the Husband. *2 Leon. 59.*

If a Feme Sole have a Bill depending in the Court of Chancery, and pendent the Suit, takes Husband, by this her own Act her Suit is abated; and if she and her Husband will have the Effect of the Suit, they must both join in a Bill of Revivor. But if a Feme in such Case be Defendant, and marries, the Plaintiff may proceed in his Suit, for the Marriage is no Abatement where she is Defendant.

The Plaintiff exhibits his Bill against a Feme Sole, whereto she makes answer, and after marries, the Plaintiff may proceed against her and her Husband, without any Revivor, and the Husband shall be bound by

H

that



that Answer she made before Marriage, in regard she shall not be admitted to take Advantage of her own Act. It is otherwise where a Woman Sole exhibits her Bill, to which the Defendant answers, and then she marries, her Husband and she cannot proceed against the Defendant without Bill of Revivor. *Baron and Feme, p. 262.*

A Man exhibits a Bill in Chancery against another Person and his Wife, for a Matter which wholly concerns the Wife, and both answer, and after the Baron dies, this is an Abatement of the Suit that the Plaintiff cannot proceed against the Feme, without Revivor; for the Feme shall not be constrained to abide by that Answer, which she made with her Husband, because she was then under the Power and Coercion of the Husband, and he being dead, and she seised and possessed of the Thing in Question, as her former Estate, she ought to make a new Answer, or she may not be bound in Equity; but if she abide by her Answer made with her Husband, then the Plaintiff may proceed, and have a Decree to bind her. *Ibid. 263.*

If a Formedon be brought by Baron and Feme, the Writ must conclude to the Feme only. The Case was, *Robert Earl of Essex*, and *Frances* his then Wife, by Fine, gave Lands to *W. G.* and *F. M.* and the Heirs of the said *W.* to the Use of *Eliz. Sidney*, Daughter and Heir of *Sir Philip Sidney*, Knt. and for Default of such Issue, to the Use of the said Lady *Frances* and her Heirs; *Et que post mortem præd<sup>i</sup> Eliz. ad præfat<sup>am</sup> Franciscam revertere debent per formam Donationis*

*nationis præd' ac vigore Stat. Et eo quod præd' Elizabetha obiit sine herede de corpore suo exeunt.* And the Earl and Countess counted accordingly. The Defendant, Viscount Lisle, pleaded in Abatement of the Writ, that the said Countess, at the Time of the Death of the said *Elizabeth*, was Covert of the Plaintiff, her now Husband ; so that the Right of the said Tenement, *si quod, &c.* to her Husband and her, did Revert ; and so by the said Writ it ought to be supposed. The Demandant demurs, and Judgment was given, That the Writ was sufficient. The Differences observed were, If it were a Formedon in Descender upon a Descent to the Wife, there the Descent in the Writ must be made to the Wife alone ; for the Descent follows the Blood, and to that the Baron is a Stranger. But in a Formedon in Reverter, wherein already nothing is invested, but the Right only returns ; there it may be laid to Return either to the Wife alone, or to the Baron and Feme. See *Hob. Rep.* 1, 2.

In Ejectment against Baron and Feme, if the Baron dies, the Plaintiff may proceed against the Wife. In an Ejectment, the Husband died after the *Nisi prius*, and before the Day in Bank. And *per Curiam* : Because it is in the Nature of a Trespass, and the Feme is charged for her own Fact, the Action continues against the Wife ; and Judgment should be entered against her Sole, as the Husband was dead. *Cro. Jac.* 356.

A *Latitat* was su'd against Baron and Feme, the Feme was arrested, but the Baron could not be taken ; the Sheriff returned *Cepi corpus* for the Wife, and *Non est inventus* for the

Baron. And the Court held nothing could be done in this Case, unless there were Bail put in by the Husband; for the Feme without the Husband cannot be sued, nor can put in Bail; and against the Husband, unless he be first taken, and put in Bail, there cannot be any Declaration; and therefore in regard the Plaintiff could not declare, the Feme was dismissed. It was said, the Plaintiff ought to sue them by Process of Outlawry, and by that Means he might have Remedy; for it were a great Mischief that a Feme Covert should intermeddle, and merchandise, and procure Goods into her Hands, and the Baron absenting himself, or keeping in his House, there should be no Remedy against them. *Cro. Jac. 445.*

An Action on the Case was brought against Baron and Feme, and the Feme appeared, and the Husband would not; and the Plaintiff's Attorney insisted upon special Bail for her, which she could not procure, and thereupon, on Motion, it was prayed that she might be delivered, giving common Bail only. By *Glin*, if there be Cause to have special Bail, the Wife must lie in Prison until the Husband appear, and put in Bail for her; for she cannot put in Bail for herself, she being a Feme Covert. *Stile 475.* The Lady *Baltinglass's* Case.

But in the Case of *Bart* and *Desmond*, in Action of Debt against Baron and Feme, it was held unreasonable that the Feme should lie in Prison 'till the Husband come in; that her giving common Bail was fitting, if another will be bound for her, but it is at the Election of the Wife, whether she will or not; and

and that she ought to be discharged without Bail, which the Court conceived reasonable, and so awarded here. Though in this Case it was agreed, that where the Feme is in Execution, she shall not be discharged; and if she be sued as a Feme, and only upon Procefs, she shall put in Bail. 1 *Keb.* 187.

The Husband only, and not his Wife, shall be imprisoned for Want of Bail, to an Action brought for the Debt of the Wife, when Sole; because the Wife cannot find Bail for herself, but the Husband must find Bail for her and himself, or be imprisoned; and before he is discharged, the Court will make him find Bail for himself and Wife. 1 *Lev.* 216.

In Action of Debt against Baron and Feme, if the Baron appears, and the Feme make Default, the Baron shall not be put to answer; but Procefs shall issue against the Wife, and *idem dies* given to the Husband. *Mich.* 11 *Fac.*

Action of Waste lies not against the Husband for Waste done by the Wife in her Lifetime, after her Death; for he is to be charg'd by Reason of his Wife, and jointly with her, and she being dead, the Action is gone, it being but a Personal Wrong done by her. If a Baron seised for Life of the Wife, and in her Right doth Waste, and after the Wife dies, no Action of Waste lies against the Husband in the *Tenuit*; for he was seised but in the Right of his Wife, and the Freehold was his Wife's. But if the Baron, possessed for Years in Right of his Wife, doth Waste, and the Wife dies, Action of Waste lies against



the Husband, for that the Law gives the Term to him. 5 Co. 75.

If a Lease for Years be made to Baron and Feme, and the Baron doth Waste, and dies, and the Wife agrees to the Estate, an Action of Waste lies against her, for she is in from the Lessor; and if the Action had been brought against Baron and Feme, the Writ should have been *Quod fecerunt vastum*; for it was the Waste of the Feme, as well as of the Baron. 2 Inst. 303.

Obligation is made to Baron and Feme, the Baron may bring the Action on this Obligation alone, in his own Name, or he may join the Wife at his Election. *Stile* 9.

And if a Bond be made to a Feme Sole, who marries, the Husband must join with her in the Suit. 1 Keb. 440.

In all Cases where the Wife shall not have the Thing when it is recovered, neither sole to herself, nor joint with her Husband, but the Husband only shall have it, there the Husband Sole shall have Action without the Wife to recover; as the Husband shall have Action sole, *per Stat. 5 R. 2.* for entring into the Lands of the Wife. 38 H. 6.

If a Feme Sole hath a Rent-charge, and Rent is Arrear, and she marries, and the Baron distrains for this Rent, on which a Rescous is made, this is a Tort to the Baron himself, and he may have an Action alone. *Hill. 38 Eliz.*

A Feme has Right to have Common for Life, and she takes Husband, and he is hindered in taking the Common, he may have an Action

Action alone, without his Wife, it being only to recover Damages. 2 *Bulst.* 14.

If *A.* demise a House to *B.* for Years, and *B.* covenants to repair the said House, during the Term, and after *A.* grants the Reversion to Baron and Feme, and the Heirs of the Baron, &c. the Baron may have an Action alone upon this Covenant; for therein Damages only are recoverable. *Cro. Jac.* 319.

A Lease is made to one for Years, rendring Rent, and to the Reversion granted to Baron and Feme, the Lessee attorns, and then Rent is Arrear, and the Term expires, the Baron may bring an Action alone for this Rent, because his Action is grounded upon the Duty, and not upon the Nature of their Estate, and the Money must accrue to the Baron; and there is no Difference where Baron and Feme are Joint-Lessors and Joint-Purchasers; in which Case it was never question'd but the Baron might bring the Action alone; but when brought by both, it hath been doubted. 2 *Bulst.* 233. *Lit. Rep.* 13.

A Man, in Consideration that a Feme Covert will cure a certain Wound, promises to pay unto her 10*l.* if she performs the Cure accordingly, she may join with her Husband in an *Assumpsit* for this Money; for the Promise arising upon a Matter of Skill and Performance of the Wife, she is the Cause of the Action, and such an Action will survive to the Wife. *Trin.* 3 *Jac. Brasbford* and *Buckingham* and his Wife.

But for a Promise or Personal Duty to the Wife, it has been adjudged that the Baron only may bring the Action; and the Husband

is entitled to the Fruits of his Wife's Labour, for which he may bring a *Quantum meruit*.

1 *Lill. Abr.* 227. 1 *Salk.* 114.

A Feme Covert, by the Custom of *London*, shall sue without her Husband, as a *Feme Sole Merchant*; but the Action must be laid within the City. And every Feme which Trades in *London*, is not a Feme Sole Merchant. 1 *Leon.* 131.

Where the Husband is under Abjuration, Feme Coverts have been held able to sue without naming their Husbands. Sir Robert Belknap's Lady, her Husband being in Exile beyond Sea, sued a Writ of Dower in her own Name, without him, and recovered it. *H.* 4.

In the Reign of *Edward II.* in *Weyland's* Case, it was held, that after the Abjuration of the Husband, his Wife should have her Jointure; and an Action was brought by her alone for a Personal Wrong done to the Estate conveyed to her. 1 *Inst.* 132.

And on the other Hand, in *Assumpsit* for Wages and Money lent, on *Non assumpsit* the Defendant proved she was married, and her Husband alive in *France*. The Jury found for the Plaintiff, upon which, as a Verdict against Evidence, she moved for a new Trial; but it was denied her; for it shall be intended she was divorced. Besides, the Husband was an Alien Enemy. 1 *Inst.* 132.

If Baron and Feme are divorced *Causa Adulterii*, and after the Wife sues Sole without the Husband, for a Defamation, altho' the Divorce does not dissolve the Marriage; yet because the Wife may sue as a Feme Sole, in such Case, by the Course of the Spiritual Court,

Court, no Prohibition shall be granted, tho' it be against the Usage of our Law. 2 Roll. Abr. 298.

For Felony, &c. Wives are indictable without their Husbands. Sid. 410. If a Wife takes away her Husband's Goods, it is not Felony; tho' if an Adulterer receives them, it will be Felony in him. 3 Co. Inst.

Baron and Feme bring an Action in the Nature of a Conspiracy, for falsely indicting of them, *Ad dampnum ipsorum*; and moved that the Wife cannot join with her Husband for the Damages; for it is a several Damage to either of them: And of that Opinion was Berkley; Croke contra, because it is grounded upon an entire Record; and they were both prejudiced, where they may join if they will, or the Husband only may have the Action. Cro. Car. 553.

In Trespass brought by Baron and Feme, for imprisoning the Wife until a Fine paid; for all the Trespass, except the Fine, they shall recover Damages in Common. 11 H. 4. But for the Fine the Husband shall recover Damages sole, because it was Chattel.

The Husband shall not be imprisoned for the Fine of his Wife, neither shall the Fine be levied upon the Goods of the Husband; but a *Capias pro Fine* shall issue out against the Wife; for it is meerly Personal. Mich. 5 W. & M. B. R.

In Affise by Baron and Feme, if it be found they were disseised, they shall recover Damages of the Issues in Common. 11 H. 4. Yet where it is found that certain Goods of the Husband's were taken upon the Land, the  
Husband



Husband Sole shall have Judgment of the Damages for them.

If the Baron be possessed of a Term, in Right of the Wife, and Damages are recovered against him, the Damages shall not affect the Term of the Wife, after the Death of the Husband, in regard she came in Paramount. *Aliter* if an Extent be upon it, or on a Recognisance in the Life of the Husband. 9 H. 6.

Baron and Feme join in an Action, and a Verdict is given for the Plaintiffs, and the Jury assess Damages *ultra misas & custagias per ipsum* (which is the Husband) *circa sectam suam exposu'* to so much, and *pro misis & custagiis illis* to so much. And upon this Judgment is given, That the Husband and Wife shall recover the Costs and Damages; altho' it is found that the Husband only expended and disbursed the Money for the Costs of Suit, for as much as the Wife had nothing; yet the Judgment is good that the Baron and Feme shall recover the Costs; for there may not be one Judgment for the Costs, and another for the Damages. 1 Roll. Abr. 516.

Where Baron and Feme are sued, the Feme cannot make an Attorney; but the Husband must make an Attorney for himself and his Wife. 2 Saund.

A Woman gives a Warrant of Attorney to confess Judgment, and then marries, you may file a Bill, and enter Judgment against both Husband and Wife, by the Practice of the Court. *Show. Rep.* 91. But it has been held, that by the Marriage of the Woman, the Warrant is countermanded; and Judgment

ment shall not be entered against Husband and Wife. 1 *Salk.* 399.

The Husband being a Prisoner in the King's Bench, a Declaration was filed against him and his Wife; and Judgment thereupon obtained against them by Default, and a Writ of Enquiry executed, and the Woman taken in Execution; but upon a Motion, the Judgment was vacated, and a *Supersedeas* granted to the Execution against the Wife.

If Baron and Feme are outlawed, and the Wife is taken thereon, she shall be set at Liberty, and the Husband be compelled to appear for his Wife; because he may bring a *Supersedeas*, which she cannot do. *Lit. Rep.* 18.

A Man and his Wife are Tenants for Life, and the Baron acknowledges a Recognisance, the Feme shall hold the Land discharged after the Death of the Baron. 8 *R.* 2.

But if the Husband be indebted to the King, and he purchases Lands for Years, to him and his Wife, and dies, this Land shall be put in Execution for the said Debt, because the Baron had Power to dispose of the Term. 2 *Roll. Abr.* 157.

If a Lease for Years be made to Baron and Feme, rendring Rent, after the Death of the Baron, if the Feme agree to the Lease, Debt lies against her for all the Arrears due in the Life of the Baron: But after his Death, she may disagree to the Lease. 2 *H.* 4.

Baron and Feme grant a Rent for Equality of Partition, this shall bind the Wife after the Death of the Husband, and shall be intended for her Benefit. 50 *Ed.* 3.

A Feme Covert borrows Money of a Man, and with it cloaths herself, better than doth belong to her Quality, although this comes to the Use of the Baron, because his Feme of Necessity ought to be cloathed; yet because it is beyond her Degree, he is not chargeable with it. 11 H. 6.

If the Wife buys any thing for Herself, Children, or Family, and the Husband does any Act precedent or subsequent, whereby he shews his Consent, though he shall not be charged upon an *Assumpsit* in Law, he may be charged by Reason of his *Assumpsit* in Fact. *Pasch. 15 Car. 2. Manby and Scot.*

If a Feme be indebted to another, and takes Husband, and dies, the Baron shall not be charged in Debt for this after the Death of the Feme. 10 H. 6.

And if a Judgment in Debt is had against a Feme Sole, and she marries and dies, the Husband shall not be charged; for he is not liable to her Debts before Coverture, unless they be afterwards recover'd in her Life-time. *Hill. 3 Jac.*

A Feme Lessee for Life, rendring Rent, takes Husband and dies, the Baron shall be charged in an Action of Debt, for the Rent incurred during the Coverture, because he took the Profits out of which the Rent ought to Issue. 10 H. 6.

The Baron in an Account shall not be charged by the Receipt of his Wife, except the Money receiv'd came to his Use. 1 *Danv.* 707.

A Feme Covert cannot submit to an Award, for the Submission is a free Act; and the Will

Will of a Feme Covert is subject to the Will of her Husband, and so is not free. But another Person may submit to an Award for a Matter which concerns the Feme, and be bound to the Performance of it; and such a Submission is good in Law; for it may be he may receive Benefit by the Submission; yet if he do not, it is of no Signification.

No Feme Covert can be Evidence, either against or for her Husband, nor the Baron against the Feme, in any Case except Treason, because it might occasion implacable Disfention. 1 Inst. 6.

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*Of the Laws of Procreation of  
Children, by a Man and his  
Wife; and therein of Bastards  
or spurious Issue.*

**I**T hath been said that the chief Business of Matrimony is to get Children, and such Children shall enjoy the Estates and Possessions of their Ancestors, according to the Rules of Discent by the Common Law, or pursuant to Limitations and Settlements made by such Ancestors in their Lives Time.

And Lands descend to the Worthiest of Blood; so that the elder Son and his Issue, shall inherit before the Younger, or any of his Issue; and all the Females of the Part of the Father, before any of the Males on the  
Side



Side of the Mother. And if there be no Heirs Male to an Estate, then shall it descend to Females as Parceners, &c. *Co. Lit.* 12, 13.

If a Person marry the Widow of a Man lately dead, who at the Time of her Husband's Decease, was with Child, and the Child is born after Marriage solemnised with the second Husband, this Child it is said shall be Heir to the second Husband, and adjudged his lawful Son.

But by *Thorpe* and *Willoughby*, 21 *E.* 2. if a Man die seised of Land in Fee-simple, and the Wife which is *privement ensient* with a Son, marry again, and after is delivered, this Son shall be Son and Heir to the first Baron, and not to the second. Tho' Justice *Bert* was of Opinion, that the Infant might chuse his Father. And it would be better Reason perhaps, if the second Husband might chuse whether he should be his Son, or no; and by Allowance make him his Heir.

Sir *Edward Coke* tells us, That if a Man marries and dies, within a short Space after, and the Wife marries again, and within Nine Months has a Child, such Child may be Heir to the first or second Husband, at his Election. *Co. Lit.* 8.

In ancient Times, Women used to feign themselves with Child, and impose upon the World borrowed Children, to deprive the right Heir of the Deceased of his Inheritance. And *Bracton* mentions a Writ directed to the Sheriff, by Virtue of which he was to call before him, the Woman pretending to be with Child, to have her examin'd by Tractation and Search of good and lawful Women, whether

whether she were pregnant or not; and if the Matter were found doubtful, she was to be committed to a Castle, and there remain without Access of any suspected Person. *Bract.*

*Anno 4 H. 3. Thomas de Aldbam, of Surrey, Brother of Adam de Aldbam, claimed his Brother's Estate, who was then lately dead. But Joan, Widow of the said Adam, pleaded she was with Child; whereupon the said Thomas obtained the Writ De Ventre inspiciendo, directed to the Sheriff, to make Inquisition, &c.*

And *Anno 29 of Queen Elizabeth, Sir Francis Willoughby, dying seised of a great Estate of Inheritance, left five Daughters and Dorothy his Wife, who at the Time of Sir Francis's Death, pretended herself to be with Child by him, which, if it were a Son, all the five Sisters would lose the Inheritance descended to them: They prayed a Writ De Ventre inspiciendo out of Chancery, directed to the Sheriff of London, that he should cause the said Dorothy to be viewed by twelve Knights, and to be searched by twelve Women in the Presence of the twelve Knights, Et ad tractand' per ubera & ad ventrem inspiciend', whether she was with Child, and to certify the same into the Common Bench; and if she were with Child, to certify for how long Time, in their Judgments, Et quando sit paritura. Whereupon the Sheriff accordingly caused her to be searched, and returned that she was twenty Weeks gone with Child, and that within twenty Weeks fuit paritura. Upon this another Writ issued out of the Common Bench, commanding the Sheriff*

riff safely to keep her in such a House; and that every Day he would cause her to be viewed by some of the Women named in the Writ, (ten being named therein) and some to be present at the Delivery, and to view the Birth, whether it were Male or Female; and the Sheriff returned, that such a Day she was delivered of a Daughter. *Cro. Eliz.* 566.

In the Reign of King *James I.* a Case happened with the like Circumstances and Proceedings as in the preceding, on this Difference. The Lady *Willoughby* was a Widow, but this was of a Feme Covert, who married within a Week after the Death of her first Husband, who is supposed to get the Child; and they did not take such a Course, as in the Lady *Willoughby's* Case, of delivering her into the Sheriff's Custody, but left her with her Husband, he entring into a Recognisance that she should not remove from the House wherein they inhabited; and that one or two of the Women should see her every Day, and two or three be present at her Travel; for this Issue might well be said to be the Child of the first Husband, and should inherit the Land. And after this Course observed she was delivered of a Female Child, who was afterwards, by Inquisition on Office, found to be the Daughter and Heir of the first Husband. *Cro. Jac.* 685. *Theccar's Case.* *Winch. Rep.* 71.

A Petition for a *Writ De Ventre inspiciendo*.

To the Right Honourable P. Lord K.  
Lord High Chancellor of Great Bri-  
tain.

*The humble Petition of A. B. of, &c.*

**SHEWETH,**

‘ **T**HAT whereas T. B. being in his Life-  
‘ time seised in his Demesne as of Fee,  
‘ of and in certain Lands and Tenements in  
‘ the County of, &c. lately died seised, ha-  
‘ ving, at the Time of his Death, no Issue of his  
‘ Body lawfully begotten. And whereas K. late  
‘ Wife and Relict of the said T. B. since his  
‘ Death, hath and still doth pretend and give  
‘ out Speeches, that she is impregnate by the  
‘ said T. B. to the Disherison of your said  
‘ Petitioner, who is next of Kin, and Heir  
‘ to the Deceased T. B. and to whom the said  
‘ Lands and Tenements by Right of Inhe-  
‘ ritage do descend, the said T. B. dying  
‘ without Issue of his Body lawfully begot-  
‘ ten. And least the said K. out of a Design  
‘ to deprive your Petitioner of his Inheri-  
‘ tance, impose upon your Petitioner a Sup-  
‘ positious Child, as Heir of the said T. B.  
‘ declaring the same to be born of her Body,  
‘ after the Death of the said T. B. to the  
‘  
‘ I Dishe-



‘ Disherifon of your Petitioner, againſt E-  
 ‘ quity and good Conſcience ;

May it pleaſe your Lorſhip to grant to your  
 Petitioner his Maſteſty’s moſt gracious  
 Writ *De Ventre inſpiciendo*, to the She-  
 riff of, &c. directed, returnable, &c.

*And your Petitioner ſhall ever pray, &c.*

A. B.

*Bracton* ſays, That if the Feme hath not  
 an Infant within forty Weeks after her Huſ-  
 band’s Death, or if ſhe be not found *Enſient*,  
 ſhe ſhall be puniſhed by Fine and Imprifon-  
 ment. But if the Feme hath a Child within  
 forty Weeks, then ſuch Infant ſhall have the  
 Heritage, if the Heir cannot prove the In-  
 fant to be another’s, and not the Huſband’s.

It has been held amongſt Phyſicians, that  
 by the Rules of Nature, the exact Time for  
 the Birth of an Infant is 280 Days from the  
 Conception ; that is forty Weeks, which is  
 nine Months and ten Days, accounting thirty  
 Days to every Month : But it is natural, if  
 the Birth be at any Time within ten Months.

In the Caſe of Doctor *Andrews*, 2 *Jac.*  
*B. R.* He died 23 *March* ; his Wife *Privi-*  
*ment enſient*, which was born 5 *January* af-  
 ter, by Computation forty Weeks and ten  
 Days after the Death of the Huſband ; and  
 the Phyſicians, upon Conference, held that  
 twenty Days backwards, or twenty Days for-  
 wards, do not take away any Legitimation,  
 though forty Weeks is the *Tempus conſtitutum*.  
*Lit. Rep.* 178.

By Accident an Infant may be born after the forty Weeks or before; and in this Case of Dr. *Andrews*, he died of the Plague, so that he was Sick but one Day before his Death; and the Woman's Father-in-Law, used her with great Inhumanity, and caused her to lie in the Streets several Nights: She was in Travel six Weeks, before she was delivered, and then she was delivered within twenty-four Hours after she was taken into the House and well used, which was a good Proof of Legitimation; though it was prov'd at the same Time, that she was a lewd Woman of her Body. And at the Trial of Doctor *Andrews's* Heir, Doctor *Chamberlain* informed the Court, upon his Oath, that he had known a Woman to be delivered of one Child, and two Weeks after to be delivered of another.

A Woman after forty Weeks and eight Days was delivered of a Daughter. By the Doctors it may be Legitimate; for as *Antenatus* might be Heir in a Child born at the End of seven Months, so might *Postnatus* actually born after forty Weeks; and they said a Child may be Legitimate, though it be born the last Day of the tenth Month, after the Conception, accounting the Months *per Menses solares*, not *Lunares*. Cro. 571. *Alfop's* Case.

If a Man hath a Child by a Woman, and afterwards Intermarries with her, yet the Issue is a Bastard by our Law. *Contra*, if the Woman be with Child by a Man, and after he marries her, and the Issue is born within the Espousals, this is not a Bastard. Nor is

it in the first Case by the Civil Law. 2 Co. Inst. 96, 97.

Though 10 Ed. 1. one R. being infirm, and in his Bed, was married to A. a Woman, by the Bishop of London privately, in no Church or Chapel, nor with the Celebration of any Mass, the said A. being then with Child by the said R. and within twelve Weeks after the Marriage, A. was delivered of a Son, and adjudged a Bastard, and so the Land escheated to the Lord, by the Death of R. without Heir. Foxcroft's Case.

If a Man, having one Wife, takes another Wife, and hath Issue by her, living the first Wife, this Issue is a Bastard, because the second Marriage is void. Co. 7.

But where a Man marries his Sister, or his Cousin, within the Degrees, the Issue between them is no Bastard, till a Divorce be had, for the Marriage is not void. 18 H. 6. 39 Ed. 3.

If the Husband be gelt, so that he cannot by any Possibility beget a Child, and his Wife hath Issue several Years after, this will be a Bastard, though it be begotten within Marriage, because it is apparent it cannot be Legitimate. Hill. 14 Jac. 1 Inst. 244.

And if a Woman have Issue, the Husband being but seven Years of Age, at the Birth, this Issue is a Bastard; for it cannot be intended by Law that it was begot by the Baron. It is the same in Case the Husband be Eight or Nine Years of Age at the Time of the Issue. And it is said, that if a Woman hath Issue, her Husband being within the Age of Fourteen, the Issue is a Bastard. 1 & 18 H. 6. 38 Aff. 24.

If a Feme Covert has Issue, and the Husband hath been so long over the Sea, before the Birth of the Child, which his Wife hath in his Absence, that it cannot be his Child, this is a Bastard. 18 H. 6. See 1 Salk. Rep. 122.

By the Law of the Land, a Man cannot be a Bastard, who is born after Espousals, unless it be by special Matter, as in the Cases before-mentioned. A Woman is big with Child by one, and another marries her, if the Child is born but three Days after Marriage, it is not a Bastard. 1 Danv. Abr. 729.

And if a Feme Covert hath Issue in Adultery, yet if her Husband be able to beget Children, and is within the four Seas, this is no Bastard. 39 Ed. 3.

If a Wife leaves her Husband, and lives with another Man, and during this Issue is born in Adultery, this is a Mulier, by our Law; but the Baron ought to be within the four Seas, so as by Intendment he may come to his Wife, otherwise it is a Bastard. And by the Spiritual Law such Issue is a Bastard. Hill. 14 Jac.

By the Common Law, if the Husband be *infra quatuor Maria*, and the Wife hath a Child, it will not be a Bastard; but he is a Bastard who is born of a Woman, when her Husband, at and from the Time of Begetting, to the Birth, is *extra quatuor Maria*. 1 Inst. 244. 2 Salk. 483.

If the Wife continues in Adultery, and hath Issue, this hath been held to be a Bastard; and Children born in Adultery, are



born out of the Limits of Matrimony. 1 *Danv. Abr.* 730.

When a Husband and Wife consent to live separate, the Children born after such Separation shall be taken to be Legitimate; because the Access of the Husband shall be presumed; but if it be found there was no Access, then they are Bastards. 1 *Salk.* 122.

A Divorce, *causa pre-contractus*, bastardizes the Issue; so *causa Affinitatis, Frigiditatis, &c.*

But if Baron and Feme continue Baron and Feme during all their Lives, the Issue cannot be a Bastard by a Divorce after their Deaths, for the Divorce in the Spiritual Court is *pro peccatis*, which may not be after their Deceases; and therefore such Divorce there is only to disinherit the Issue, which they cannot do. 7 *Co.* 44.

If *A.* marries *B.* and after they are divorced, *causa Frigiditatis* of the said *A.* so that for three Years after the Marriage, she *remansit virgo intacta propter perpetuam impotentiam, &c.* and after *A.* marries *C.* by whom he hath Issue in the Life of *B.* this Issue is Legitimate; for by the Divorce, the Marriage was dissolved; and if the second Marriage is voidable, yet it continues 'till it is dissolved, which cannot be after the Death of the Parties. Adjudged upon a special Verdict. *Mich.* 40 & 41 *Eliz.* Case of *Webber* and *Bury*.

A Remainder is limited to *A. B.* Son of *E. B.* although he be a meer Bastard, and no *Mulier*; if he is reputed for his Son, it is a good Remainder. But if an Estate for Life be made, the Remainder to the Issue of the  
Body

Body of *E. B.* or of him begotten on the Body of *K. B.* if he has afterwards illegitimate Issue, such Issue shall never take this Remainder, because he cannot have the Reputation of Issue before they are born. 1 *Inst.* 3.

If *A.* makes a Feoffment in Fee, to the Use of himself for Life, Remainder to the eldest Issue Male of one *C. D.* of her Body begotten by *A.* the Feoffor, whether he be lawfully begotten or not, if he be the reputed Son of *A.* it is sufficient for him to intitle himself to say, That he is Son of the said *A.* begotten on the Body of the said *C. D.* and that he is so reputed in the common Fame of the Country, though he was not born, nor *in esse*, at the Time of the Remainder granted; and although there are lawful Issues between them, which are *puisne* to the Bastard; for the Person who is to take, is certainly described, and the Bastard of a Woman is known to be her Issue, and this is limited to the eldest Issue. *Mich.* 38 & 39 *Eliz.*

By a Devise of all a Man's Goods to his Children, a Bastard *eigne* shall take a Portion.

But notwithstanding a Bastard be a reputed Son, yet he is not such a Son, in Consideration whereof an Use can be raised to him, because in Construction of Law, he is *Nullius Filius.* 1 *Inst.* 123.

Where a Man hath a Son by a Woman before Marriage, which is a Bastard, and unlawful; and after he marries the Mother of the Bastard, and they have another Son, this second Son is *Mulier* and lawful, and shall be Heir to his Father; and they are distinguish'd

in our old Books, with the Addition of *Bastard eigne* and *Mulier puisne*. *Co. Lit.* 170, 243.

A Man seised of Lands in Fee, and hath Issue *Bastard eigne*, and *Mulier puisne*, and dies, if the Bastard enters, and the *Mulier* dies, his Wife *priviment ensient* with a Son, and the Bastard hath Issue and dies seised, then the Son is born, his Right is bound for ever; but if the Bastard dies seised, his Wife *ensient* with a Son, whereupon the *Mulier* enters and the Son is born, the Issue of the Bastard is barred; for there must be not only a dying seised, but a Discent to his Issue. *1 Co. Inst.* 244.

And the Case of *Bastard eigne* and *Mulier puisne* differs from the common Cases of Descents; for Descents do only Toll the Entry of him who has Right, and leaveth him to his Action; but if a Man seised of Lands in Fee hath Issue two Sons, *Bastard eigne* and *Mulier puisne*, and the Father dies, the Bastard enters, claiming as Heir to his Father, and occupies the Lands for his Life, without any Entry made upon him by the *Mulier*, and the Bastard hath Issue and dies seised, and the Land descends to his Issue, who enters, in this Case the *Mulier* is barred for ever, both of his Entry and his Action, the Issue being become, in Judgment of Law, lawful Heir. *1 Inst.* 244.

The Question of Bastardy, or Legitimation, ought to be first moved in the Temporal Courts, and Issue to be there joined, and then transmitted to the Ecclesiastical Court by the King's Writ, to be examined and tried there; and thereupon the Bishop shall

shall make his Certificate to the King's Court, which being duly made, the Law gives entire Credit to it. *Dav. Rep. 52.*

Where an Issue is joined upon Bastardy, before it shall be awarded to the Ordinary to be tried, Proclamation is to be made thereof in the same Court ; and afterwards the Issue shall be certified into Chancery, where Proclamation shall be likewise made once a Month, for three Months ; and afterwards the Chancellor is to certify this to the Court where the Plea is depending ; and then it shall be proclaimed again in the same Court, that all those whom this Plea doth concern, may go to the Ordinary to make their Allegations. 9 H. 6.

General Bastardy ought to be tried by the Bishop, and not *per pais*, 18 Ed. 4. and special Bastardy ; as whether one was born or begotten before or within the Espousals ; or whether a Woman be a Man's Wife or not, or she were married to another before. These Matters being specially alledged, and put in Issue, it shall be tried *per pais*. *Hard. 2, 63.*

If the Issue be, whether born before Marriage ; and in an Issue against an Infant, if Bastardy be pleaded in the Infant, this shall not be tried by the Ordinary, but *per pais* ; because the Infant is not compellable to take Issue upon it ; for then he should lose the Advantage of the Inquiry of Circumstances, and so no Issue can be joined upon this ; and if Issue be not joined between the Parties, the Ordinary shall not try it. 30 Aff. 45.

But if Issue be whether a Bastard or a *Mulier*, it shall be tried by the Ordinary, by Certificate  
And



And no Courts, but the King's Courts of Record, as the Court of King's Bench, Common Pleas, Justices of Assise, and Gaol-Delivery, &c. may write to the Bishop to certify Bastardy; for it is a Rule in Law, That none but the King can write to a Bishop to certify; and therefore no inferior Court, as *London, Norwich, York, &c.* can write to the Bishop; in such Cases, the Plea must be removed *in Banco*; and this Court ought to write to the Bishop, and after to remand it again. 1 *Inst.* 134.

In Assise, if the Tenant saith that *A.* the Father of the Plaintiff, took *B.* to Wife, and had Issue the Plaintiff; and after they were divorced, and so the Plaintiff is a Bastard; to which the Plaintiff answers, That he is a Mulier; upon which a Writ is directed to the Bishop, who certifies that the Plaintiff was born in loyal Matrimony, without fully certifying that he is a Mulier; and although the Tenant had acknowledged in his Plea, that there was a Marriage, and that the Plaintiff was born in it; yet because, if there was a Divorce, then this was not a lawful Marriage, the Certificate aforesaid is good, which certifies that he was born in lawful Marriage. 43 *Aff.* 43.

If a Man be certified a Bastard by the Ordinary, he shall be perpetually bound against all the World, to avoid a contrary Certification, and because it is the highest Trial thereof. *Br. Trial* 9.

But if a Man be certified a Mulier, by the Ordinary, this is not any Estoppel, because he may be a Bastard by our Law notwithstanding.

standing. Upon Issue of Bastard, or not, if the Ordinary certify that the Plaintiff was a Mulier, *prout per Inquisitionem invenit*; this is good without certifying generally *Legitimus*.  
3 H. 6.

It is only in the Power of the King and Parliament, to make a Bastard Legitimate.  
*Dav. 57.*

I shall conclude this Chapter with the Laws relating to Bastardy, where it affects not the Estates of Ancestors; but the Parents are obliged to provide for the Child, or undergo a Corporal Punishment.

By 18 *Eliz.* two Justices of Peace (one of the *Quorum*) near the Parish in which a Bastard is born, may upon their Examination take Order for the Punishment of the reputed Father and Mother; and also for the better Relief of the Parish; and may charge the Mother or reputed Father with the Payment of Money weekly, for the Relief of such Child. And if the reputed Father or Mother shall, upon Notice of such Order in Writing, refuse to pay the same, then the Person refusing shall be committed to the common Gaol, until he find Sureties to perform the Order; or else to appear at the next General Sessions of the Peace, and obey such Order as shall be made there, &c.

An Order of Justices for the Maintenance  
of a Bastard Child.

Gloucester ff. *THE* Order of A. B. and C. D.  
Esqs; two of his Majesty's Ju-  
stices of the Peace for the said  
County (one whereof is of the  
Quorum) and both now residing  
near to the Parish of, &c. in  
the County aforesaid, made this  
Day, &c. in the Year of our  
Lord 1719. according to the Form  
of the Statute in that Case made  
and provided concerning a Ba-  
stard Child lately born in the  
said Parish of, &c. of the Body of  
E. F. single Woman; which Ba-  
stard Child ever since its Birth,  
hath been and is still charge-  
able to the said Parish, and is  
likely so to continue.

FIRST, Upon Examination of the Cause,  
and Circumstances of Premisses, taken upon Oath,  
before us, and due Consideration thereof, we do  
adjudge G. H. of, &c. Teoman, to be the pu-  
tative Father of the said Bastard Child. And  
we do Order that as well for the Relief of the  
said Parish of, &c. in Part, as also for a Pro-  
vision for the said Bastard Child, that he the  
said G. H. shall weekly and every Week, from  
the Time of the Birth of the said Child, and so  
long

long as the same shall be chargeable to the said Parish of, &c. pay or cause to be paid, unto the Church-wardens or Overseers of the Poor of the Parish aforesaid, for the Time being, the Sum of 2s. for and towards the Maintenance of the said Child; and shall likewise pay or cause to be paid unto the Church-wardens or Overseers of the Poor of the Parish aforesaid, for the Time being, the Sum of 4l. within three Months after the said Bastard Child shall arrive at his Age of Twelve Tears, for and towards the placing forth the said Child to be an Apprentice. And farther, we do hereby order, that the said E. F. shall every Week, for so long Time thereof as the said Child shall be chargeable as aforesaid, and she shall not keep the same, pay or cause to be paid, unto the Church-wardens or Overseers of the Poor of the Parish of, &c. aforesaid, for the Time being, 1s. for and towards the farther Maintenance of the said Child. And lastly, we do order, that the said G. H. do, upon Notice of this our Order, forthwith give sufficient Security to the Church-wardens and Overseers of the Poor of the Parish of, &c. well and truly to perform so much thereof as doth concern the said G. H. and which, on his Part, is hereby ordered to be done and performed. In Witness, &c.

Justices in Sessions have the same Power to do all Things concerning Bastards, that Justices in their severall Counties have. 3 Car. 1. But if Justices of Peace, in their Sessions, revoke an Order of two Justices, for keeping a Bastard Child, they are liable to keep the Child



Child themselves, if no Father can be found,  
1 *Vent. Rep.* 59.

On an Appeal the Sessions will either affirm or quash the Order made by the two Justices. A Motion was made in the Quarter-Sessions to quash an Order made that one should keep his reputed Child, because he had kept him heretofore; but it not appearing by the Order, either that he was his Bastard, or his lawfully begotten Child, the Order was quashed. *Style Rep.* 154.

An unmarried Woman, big with Child, was remov'd from *Westbury* to *Corsham* in *Wiltshire*, and there she was delivered. *Corsham* appealed to the next Sessions, and there the Order was reversed: Afterwards two Justices sent the Child, by Order, to *Corsham*, where it was born; and upon their Appeal, this last Order was confirmed. At last, it being removed in *B. R.* it was adjudged that the Birth did not settle the Child at *Corsham*, because the Mother was there under an illegal Order, procured by *Westbury*, which being reversed, it must now be taken that they unlawfully procured the Woman to go to *Corsham*. *Trin.* 3 *Annæ*, *B. R.* 1 *Salk.*

It is said that the two Justices have no Power to commit a Person for not performing their Order, but they are to bind him in a Recognizance to appear at the next Quarter-Sessions. *Bulst.* 341.

And Justices have no Power, but to indemnify the Parish, (*viz*) only to oblige the putative Father to maintain the Child, as long as it is or may be chargeable to the Parish;  
for

for the Father may take the Child when he pleases, and maintain it himself. 2 *Saund.* 82.

If the Child dies after the Order is made, and before the next Sessions, and no Security is given to perform the Order, yet when the Party appears at Sessions, the Justices may order him to pay the Charges, upon Proof of serving the Order. And an Order made to pay such Charges as the Parish had been at, without saying *That the Child was likely to be chargeable*, &c. was held good. 1 *Vent.* 37.

A Bastard of a Person, able to keep it, and not likely to become chargeable to the Parish, is not within the Statute 18 *Eliz.* If the Father of a Bastard Child pay a competent Sum of Money in Gross, to the Overseers of the Poor, for Maintenance of the Child, he shall be discharged. And if the reputed Father, or the Mother have Lands or Goods, the Church-wardens and Overseers of the Poor, by Order of two Justices, may seise so much of the said Goods, and receive the Rents of the Lands, towards the Discharge of the Parish. 24 *Car.* 2. c. 12.

Two Justices of Peace may inflict a Corporal Punishment upon the reputed Father, not being of Ability to discharge the Parish, by Whipping, Stat. 18 *Eliz.* And the Justices may commit lewd Women to the House of Correction, who have Bastards that may be chargeable to the Parish, there to be punished, and set at work for a Year. 7 *fac.* 1.

But if the Woman will discharge the Parish, she cannot be punished by this Act; though by 18 *Eliz.* she may be punished with

with Whipping; as may likewise the reputed Father, though it is not usually done.

In the Hundred of *Middleton*, in the County of *Kent*, according to ancient Records, he that gets a Bastard shall forfeit all his Goods and Chattels to the King. *MS. Temp. Ed.3.*

And in some Parts of *England*, by the Customs and Tenures of Manors, a Widow that has a Bastard, forfeits her Estate, unless she comes into the Court of the Manor, in the Presence of the Steward and all the Tenants, and pronounces the following Lines, riding on a Ram,

—Here I am,  
Riding upon the Back of a black Ram,  
Like a Whore as I am;  
And for my Crincum Crancum,  
I have lost my Binkum Bankum;  
And for my Tail's Game  
Have done this worldly Shame;  
Therefore pray, Mr. Steward, let me have  
my Land again.

Upon this Penance she is restored to the Possession of her Estate, for that Time.

*Of Conveyances, Fines and Recoveries, Leases, Wills, &c. made by and to Baron and Feme.*

A Feme Covert cannot take any Thing of the Gift of the Husband, but she is of Capacity to purchase of others, without the Consent of her Husband, though the Husband may disagree thereto, and devest the whole Estate; and if he neither agree nor disagree, the Purchase is good; yet after his Death, altho' he agreed thereto, she may, without Cause alledged, wave the same; so may her Heirs also, if after the Death of the Husband, she agreed not to it. *1 Co. Inst. 3.*

By no Conveyance at the Common Law, a Man could during the Coverture, either in Possession, Reversion or Remainder, limit an Estate to his Wife. But a Man, by his Deed, may covenant with others to stand seised to his Wife's Use, or make a Feoffment, or other Conveyance to the Use of his Wife, and the Estate is executed to such Uses, by the Stat. 27 H. 8. Though a Man cannot covenant with his Wife to stand seised to her Use, because he cannot covenant with her, and they are one Person in Law. *1 Inst. 112.*

A Man may devise an Estate by Will, to his Wife, because the Devise doth not take Effect 'till after the Decease of the Devisor. *Co. Lit. 112.*

One being enfeoffed to the Use of a Feme, she takes Husband, who sells the Land to a



Stranger; the Feme received the Money, the Husband and Wife pray him that was enfeoffed, to the Use of his Wife, to make an Estate to the Stranger; this Sale in Equity ought to be construed the Sale of the Husband alone, and it shall not be esteemed that the Wife did it; for the Deed of the Baron, and the Receipt of the Money by her, is not material, because she cannot have the free Disposal. *Chanc. Rep.*

Baron and Feme join in a Feoffment of the Wife's Land, rendring Rent, the Husband dies, the Feme takes another Husband before any Rent-Day, and the second Husband accepteth the Rent, the Feoffment is affirmed for ever. *Co. Lit.*

Debt on a Bond, conditioned for the Performance of Covenants in an Indenture, made between *A. B.* and *E.* his Wife, of the one Part, and the Plaintiff of the other Part, the Defendant pleads the Indenture as an Indenture of *A. B.* and *E.* his Wife; whereas the Wife never sealed it. The Plaintiff replies, that the Indenture shewed by the Defendant, *Non fuit facta inter A. B. and E.* his Wife, on the one Part, and the Plaintiff on the other. The Jury find the Baron sealed it, but the Wife did not: This Verdict is found against the Defendant, who pleaded it as the Deed of the Wife. *Per Curiam*, The Plaintiff is not estopped to say, That the Deed shewed is not the Deed of the Baron and Feme; but he is estopped by the Condition to say, There is not any such Indenture: But if the Baron had sealed and delivered it in the Name of the Feme, it had been

been the Deed of the Wife, during the Life of the Husband; and if they by Indenture, had bargained and sold the Land of the Wife, rendring Rent, it would have been a good Deed of the Feme's; because she afterwards might have accepted the Rent, and affirmed it as her Deed: And Judgment was given *pro Quer*. *Cro. Eliz.* 269.

If the Baron hath a Term in Right of his Feme, he may grant over the whole. But if the Baron makes a Lease for Years to another, to the Use of his Feme, if she lives so long, for the Jointure of the Feme, the Baron cannot Dispose of this Trust. And if a Baron grants a Term in Trust, and for the Benefit of his Wife and Children, he cannot Dispose of the Trust for the Children. *Lane* 55.

A Lease is made to Baron and Feme for Years, the Baron cannot devise the Term; for the Feme is in by Survivorship, before the Devise takes effect. And if the Baron hath a Term in Right of the Feme, and he grants a Rent out thereof, and dies, the Feme shall hold it discharged; for she comes Paramount to the Charge. *Co. Lit.* 351.

If the Baron grants Part of the Term, of which he is possessed, in the Right of the Feme, and dies, the Feme shall have the Reversion not disposed of. *Co. Lit.* 46. But if the Baron reserves a Rent upon the Grant, she shall not have it; because she comes Paramount the Reservation.

The Baron grants the Lands which he hath in Lease, in the Right of his Feme, except

Part; the Feme shall have this Part so excepted.

If the Baron possessed of a Term for Years, in the Right of his Feme, makes a Lease for Part of the Years, to commence after his Death, and dies, this is a good Lease against the Feme, but she shall have the Reversion. *Popb. Rep. 4.*

A Baron possessed of a Term in Right of his Feme, grants it to *A. B.* if he lives so long, and dies, the Feme shall have this Possibility of a Reversion, if *A. B.* dies within the Term, and not the Executors of the Baron. *Pasch. 12 Jac.*

But where a Baron, possessed of a Term, in the Right of the Feme, grants it over upon Condition, that the Grantee shall pay 10*l.* to his Executors, the Baron dies, the Condition is broke, and the Executors of the Baron enter, the Feme shall not have the Term, all the Interest being granted over. *Co. Lit. 46.*

If a Feme possessed of a Term, takes Husband, and they grant the Term upon Condition, if their Executors or Administrators pay 10*l.* then to re-enter, and after the Baron pays the 10*l.* this is not any Disposition or Alteration, but they shall be possessed in the Right of the Feme; for tho' he paid the Money to redeem it, yet perhaps he received the Money when it was mortgaged. *12 Jac. Roll. 345.*

But if Baron and Feme are ejected of a Term held in Right of the Feme, and the Baron recovers in an *Ejectione firmæ*, brought by him, in his own Name only, this is an Altera-

Alteration of the Term, and vests in the Baron. *Co. Lit.* 46.

Baron and Feme Jointenants for Life, the Baron may surrender to him in Reversion, and this shall bind the Husband, though not the Wife; nor shall be any Discontinuance to her; but this is not a good Surrender, during the Life of the Baron. *Kelw.* 42.

If a Lessee for Life enfeoff the Baron and Feme in Reversion, in Right of the Wife, this is a Surrender; (admitting it not to be a Forfeiture) but if Lessee for Life grant his Estate to Baron and Feme in Reversion, in Right of his Wife, this is not any Surrender for the Benefit of the Baron. *21 H.* 7.

*A.* and *E.* his Wife, take a Lease jointly for their two Lives, and by new Indenture take a new Lease to them two and the Survivor, the Acceptance of the second Lease to commence *a die Datus* is a Surrender, because they conclude then that the Lessor had Power to make a new Lease, which he cannot do unless the former be surrendered. *Moor* 636.

If a Feme Lessee for Years take Husband, who after accepts a new Lease for their Lives, this is a Surrender of the first Lease. *Plowd.* 199. But Baron and Feme cannot expressly, nor by Acceptance of a new Lease, surrender the Wife's Freehold, so as to bind her surviving. *Hob.* 203, 204.

Baron and Feme make an Exchange with another, this is good, during the Coverture. *39 Ed.* 3. And if the Husband exchange the Land of the Wife for Lands of less Value; if the Wife, after his Death, once agree to



the Exchange, she shall never avoid it afterwards. 9 H. 6.

But if Husband and Wife are seised of Lands in Right of the Wife, they both join in an Exchange of the Lands to a Stranger for other Lands, which Exchange is executed; and the Husband and Wife seised of the Land taken in Exchange, alien the same by Fine. *Per Curiam*, The Wife after the Death of the Husband, may enter into her own Land, notwithstanding the Fine. 1 Leon. 285.

And if the Husband alien the Lands of the Wife, she may recover by a *Cui in vita*, after his Decease; but she can have no Remedy so long as he is living. *Co. Inst.* 2 Pt. 343.

Two Husbands and their Wives join in a Grant of the Lands of their Wives, and covenant that they have Right to convey, and to make farther Assurance within seven Years, one of the Wives is within Age at the Time of making the Deed, and the Right of the Lands descended to her Son, an Infant; by which the Moiety of the Estate was devested out of the Plaintiff. Adjudg'd, that the Wife being within Age at the Time of the Covenant, (which was made appear on the Verdict) she had not Power then to convey the Estate according to the Covenant, and there was no Request to make the Assurance. And the Death of the Wife in the Infancy of her Son, was the Act of God; and it was the Default of the Plaintiff, that he did not demand Assurance in the Life of the Wife, after her full Age. *Sir Thomas Jones* 195.

Baron

Baron and Feme, and a third Person, purchase Land to them and the Heirs of the Husband ; and the third Person releaseth to the Baron all his Right, &c. without the Word *Heirs* ; and afterwards the Baron and Feme make a Lease for Years, rendring Rent to them and the Heirs of the Baron ; the Baron dies, the Heir shall have the Moiety of the Rent, after the Death of the Baron and a Release to the Husband only shall enure to him Sole, and not to the Wife. *Dyer* 263.

A Joint Estate of Land is made to Baron and Feme, and to a third Person ; in this Case the Baron and Feme have in Law but a Moiety, and the third Person shall have the other Moiety ; for they are but one Person in Law. The same Law is where an Estate is made to Baron and Feme, and two other Men ; here the Baron and Feme have but a third Part, and the other two Men the other two Parts. *Lit. Sect.* 291. 1 *Inst.* 187.

At Common Law, if Land had been given to the Baron and Feme, and a third Person, and to their Heirs, and the Baron had made a Feoffment in Fee, this had been a Discontinuance of the one Moiety, and a Disseisin of the other, so as after the Death of the Baron the Wife had a Right of Entry for one Moiety, and the other Jointenant a Right of Entry into the other. *Co. Lit.* 326.

Lands are given to *A. B.* and *C. D.* a Feme, and the Heirs of the Body of *A. B.* Afterwards *A. B.* and *C. D.* marry, and the Baron suffers a common Recovery against himself, only without naming his Wife ; the Recovery is falsified for one Moiety, because

the Wife who was Jointenant with *A. B.* was not named and made a Party. And this Recovery binds not the Moiety of the Wife.  
3 *Leon.* 270.

Baron and Feme are Jointenants, and after they Intermarry, they shall take by Moieties ; but of Land given to them after Marriage, they take by Intierties ; for Baron and Feme cannot take by Moieties, during the Coverture. If Lands are let to a Feme Sole for her Life, who marries, and afterwards the Lessor confirms the Estate of the Baron and Feme, *Habendum* for Term of their Lives ; the Husband doth not hold jointly with his Wife, but holdeth in the Right of his Wife, for Term of her Life ; for the Wife hath the whole for Life, and Jointenants must come in by one Title. But if I let Lands to a Feme Sole for Term of Years, who takes Husband, and after I confirm the Estate of the Husband and Wife, to have and to hold for the Term of their two Lives ; in this Case, they have a Joint Estate of Freehold of the Land ; for that the Wife had no Freehold before. It is the same of a Release, in both Cases, and the Chattel of the Feme Covert is drown'd. But if Land be let to a Feme Sole for Life, who marries, and a Confirmation is made to the Baron and Feme in Fee, they are Jointenants of the Fee-simple ; and the Husband is seised in Right of his Wife, during her Life. *Baron and Feme*, p. 176.

If a Man lets Land to the Husband and Wife, *Habendum* the one Moiety to the Husband for Term of his Life, and the other Moiety to his Wife, for Term of her Life ;  
and

and the Lessor confirms the Estate of both in the Land, to have and to hold to them and their Heirs, by this Confirmation, as to the Moiety of the Husband, it enures to the Husband only and his Heirs; and the Wife has nothing in that Moiety: But as to the Moiety of the Wife, they are Jointenants, for the Husband hath such an Estate in his Wife's Moiety, in her Right, as is capable of a Confirmation. 1 *Inst.* 299.

By Fine levied, &c. on Marriage to the Use of the Husband and Wife, for their joint Lives, Remainder to the Heirs of the Body of the Wife, by the Husband to be begotten, Remainder (the Wife surviving the Husband) to her for Life, Remainder to the Right Heirs of the Husband; this was adjudged to be an Estate-tail, executed in the Wife. *Raym.* 127. 3 *Salk.* 338.

Estate-Tail of Land are *general*, where Lands or Tenements are given to a Man and the Heirs of his Body begotten, or to a Woman, and the Heirs of her Body begotten: Or they are *Special*, when Lands and Tenements are given to a Man and his Wife, and to the Heirs of their two Bodies begotten, &c. In the first Case it is called a General Tail, because whatever Woman the Baron taketh to Wife, or whatsoever Man the Feme takes to her Husband, the Issue may inherit the Land; or if she have divers Husbands, and have Issue by every of them, they shall inherit one after another, as Heir of her Body. But in a Special Tail, no other Persons can inherit but the Issue that are begotten by the Man on that particular Wife; for if  
the



she die, and the Baron marries a second Wife, by whom he hath Children, they shall have no Benefit by it. *1 Co. Inst.* 19, 20.

If Lands are convey'd to Baron and Feme, and to the Heirs of the Body of the Man, the Husband hath an Estate in General Tail, and the Wife an Estate for Life; and if the Estates made to the Husband and Wife, and the Heirs of her Body, by him begotten, there the Wife hath an Estate in Special Tail, and the Husband for Term of Life only. But if an Estate be limited to a Man's Heirs, which he shall beget on his Wife, this creates a Special Tail in the Husband, and the Wife will have nothing. *1 Inst.* 26.

Where a Feme Covert is Tenant for Life, and the Baron and Feme accept of a greater Estate of him in the Reversion, yet after the Death of the Baron she may wave it, and claim her first Estate for Life. *2 Saund.* 386. And if Lands are given to Baron and Feme, and their Heirs, the Baron makes a Feoffment in Fee, the Feoffee gives the Land to the Baron and Feme, and the Heirs of their two Bodies, and the Baron dies; in this Case the Wife may elect which of the Estates she will. *1 Co. Inst.* 357.

Baron and Feme Tenants in special Tail, upon Purchase of the Baron, have Issue two Sons; the Husband makes a Feoffment to the Use of himself for Life, Remainder to the Wife for Life, the Remainder to the second Son and his Heirs; the Baron dies, the Feme enters and makes a Feoffment to the Issue of the second Son, and the Eldest enters for the Forfeiture within the Stat.

Stat. 11 H. 7. his Entry is congeable ; and this Feoffment by the Wife (tho' it be to him who had the Reversion in Fee) is a Forfeiture within the Statute ; for by the Entry of the Wife, he was remitted. *Sid.* 63.

Land is given to Baron and Feme in special Tail, the Baron aliens the Land in Fee, and takes back an Estate to him and his Wife for Term of their Lives, this is a Remitter to the Baron and Feme; and it cannot be a Remitter to the Wife unless it be a Remitter to the Husband, they being one Person in Law.

Tenant in Tail before the Statute 27 H. 8. made a Feoffment in Fee for the Use of his Wife for Life, and after to his Son and Heir in Fee ; then the Statute is made, and the Baron and Feme are dead, the Issue shall not be remitted. And if a Feme having Right to Lands discontinu'd, where his Entry was not lawful, if she come to the Land by way of an Use raised out of that Estate, she shall not be remitted, for she must be in of the Estate, as she was of the Use ; but the Statute 32 H. 8. has chang'd the Reason of this Case, which gives the Wife Entry against her Husband's Fine ; so that now by the Use rais'd to her out of such Estate, she is not in of an Estate discontinu'd, but of an Estate ; whereupon after the Death of her Husband she might have re-enter'd. Now as upon Re-entry, in case where the Entry is lawful, she is remitted ; so where an Estate is convey'd to her, and is in her, tho' by the Statute her Entry being lawful, she shall be adjudg'd in of her best Estate. *Hob.*

If Baron and Feme are Tenants in special Tail, and the Baron only levies a Fine to the Use of himself and his Wife for Life ; altho' the Entail be barred as to the Baron and the Issues, yet the Wife is remitted to the Estate-Tail, as she should have been by an Entry, after her Husband's Death ; and the Remainders which were depending upon that Estate-Tail are likewise remitted. *Hob. Rep.* 257.

The Father was Tenant for Life, remainder to his Daughter and Heir Apparent (a Feme Covert) in Fee ; the Father makes a Feoffment to divers Uses, and after levies a Fine with Warranty and dies, the Daughter by Consent of her Husband enters within the Year after the Fine, claiming the Land as her Inheritance ; the Entry by the Feme only by the Consent of her Husband is good, and the Warranty descending upon her during the Coverture, where her Entry is congeable doth not bind her ; neither doth it bind the Husband, because it descends not upon him, and being void to bind her shall not bind him. *Cro. Eliz.* 72.

Husband and Wife Tenants in special Tail, the Husband levies a Fine and dies ; the Estate-Tail is barr'd tho' not determin'd, but hath Continuance so long as the Wife lives, or the Heirs in Tail remain. *9 Rep.* 138.

And altho' the Wife hath an Estate-Tail, yet she cannot levy a Fine, or suffer a Recovery : Because she cannot bar that which was barr'd before by the Priority of the Act of the Husband. *9 Rep.* 142.

A Wife levies a Fine as a Feme Sole, of Land whereof she was seized ; this shall bar her

her and her Heirs, if the Husband doth not enter. *Coke* 10. *Rep.* 43. But if the Husband enters and dies, the Conuzee shall not have the Land: For by the Entry of the Husband the Conuzee's Estate was defeated, and the Wife's ancient Estate reverted in her; and the Husband was seized of the whole Estate in the Right of his Wife. 7. *Rep.* 8.

Baron and Feme levy a Fine of the Wife's Land, the Husband only declares the Uses; it shall bind the Feme, if her Discent doth not appear. 2. *Rep.* 57.

When Baron and Feme levy a Fine of the Wife's Land, and the Baron declares by one Deed the Uses, and the Wife by another; or where neither of them declares any Uses which are sufficient in Law, there the Law doth immediately revert the Uses in the Feme solely. 2. *Rep.* 58.

Baron and Feme, the Feme within Age, levy a Fine; and upon Inspection the Wife was adjudg'd to be within Age; the whole Fine was revers'd. 1. *Leon.* 116.

A Fine is levied by Baron and Feme, the Feme being under Age, and on Error brought the Fine is reversed for the Non-age of his Wife: The Question in *Worsley* and *Charnock's* Case was, if the Fine should be utterly reversed, or reversed only as to the Wife, and stand good against the Husband; and two great Precedents were cited, the one contrary to the other; they who argued that the Fine should be reversed for the whole, cited *Ely* and *Ford's* Case, *H.* 8. A Fine was levied between *R. Ely* Plaintiff, and *N. Ford* and  
*Jane*



*Jane* his Wife Defendants; the Wife being within Age, and Judgment was given that the Fine should be reversed; and the Baron and Feme restored; and thereupon a Writ issued to the *Custos Brevium* to bring into Court the Foot of the Fine, and it was presently cancell'd in Court. The other Precedent contrary was 7 *Eliz.* Baron and Feme levied a Fine, the Husband died the Wife being within Age, the Wife took another Husband, and they brought a Writ of Error, and the Wife by Inspection was adjudg'd within Age, and the Fine was reversed as to her and her Heirs only: But in this Case the second Husband was a Stranger to the Fine, and so it might seem absurd to reverse it as to him; but in the principal Case it was adjudg'd, that the Fine should be reversed as to both; for the whole Estate moved from the Wife, and all pass'd out of her, and Judgment was given *Quod finis predict' reversetur.* 2 Co. 77.

At twenty Years of Age a Feme Covert levied a Fine before Commissioners in the Country, and the Wife dying without Issue she had settled the Estate upon her and her Husband, and the Heirs of their two Bodies: The Court was mov'd to set it aside, but they agreed they could not meddle with it; but if the Wife had been alive and under Age, they might bring her in by *Habeas Corpus*, and inspect her, and set aside the Fine upon Motion, for perhaps the Husband would not suffer the bringing of a Writ of Error; and the Commissioners in this Case were not fined, because they could not discern

cern. by the view whether she was of Age, she being twenty Years old: But had it been apparent by Inspection that she was within Age, or the Commissioners had perfectly known that the Feme had been under Age, then they ought to have been fin'd. 2 *Ventr.* 30.

A Feme Covert levied a Fine within Age, she was inspected by the Court, and adjudg'd within Age; whereupon a *Scire Facias* issued to the Tertenants, who pleaded she was of full Age at the Time of the Fine levied; upon which Plea Issue was join'd, and a Trial had at the Assizes, and Verdict *pro Quer.* who came into Court and now pray'd Judgment. *Per Glyn:* the Court is to judge of her Non-age and not the Jury; and tho' the Proceedings are not duly had yet they do no Hurt, and the Fine was reversed. *Stile* 472.

Feme Covert of nineteen Years of Age acknowledg'd a Fine before Commissioners, several Judges being in Town who might have examin'd her: She died on *Friday Easter Week*, but the Fine and King's Silver were enter'd as of *Hillary Term*, four Days before the Wife's Death: The original Writ of Covenant bore Date 15 *Jan. Ret. Craft. Pur.* and the *Dedimus potestatem* 18 *Jan.* This Fine was stop'd the ingrossing, for undue Means in obtaining it. *Dyer* 220. But in 11 *Co.* the Fine adjudg'd good.

If Baron and Feme levy a Fine, and the Conuzance is taken six Days before Term *Pasch.* and the Writ of Covenant is returnable *quindena Pasch.* which is the third of *May*,  
and

and the Husband dies the ninth of *May*, the King's Silver not being enter'd; yet if upon Examination it appears that the Clerk had enter'd the King's Silver in Paper, before any Exception taken to it, and that now he had enter'd the King's Silver on the back of the Writ of Covenant, as it ought to be, the Fine shall not be stayed; for when this is enter'd, it shall have Relation to the Writ of Covenant. *Pasch. 7 Jac.*

A Man and his Wife acknowledg'd a Note of a Fine 26 *Mar.* by *Dedimus potestatem*, and the Wife died the 27th of the same Month; the 28th Day Composition was made in the Alienation Office, on a Writ of Covenant returnable in *Hillary* Term before; and the Kings Silver was enter'd in the Office as of the same *Hillary* Term, and so the Fine was pass'd and Engross'd; and in *Easter* Term the Heir of the Wife moved against this Fine; but the Court resolv'd the Fine should stand. *Hub. 330.*

A Feme Covert is to be examin'd upon a Fine, when she and her Husband pass some Estate or Interest, or make a Grant and Render to another, or Release her Right by a Fine of Lands or Tenements. 1 *Inst. 353.*

The Examination of a Feme Covert ought to be secret, and the Effect is, to Examine her whether she be Content to levy a Fine of such Lands, naming them particularly and distinctly, and the Estate that passeth by the Fine, of her own voluntary free Will, not by Menaces or compulsoy Means: But where nothing is contain'd in the Fine, but only that the Husband and Wife do take an Estate

state by the Fine, this shall not conclude the Wife ; because in such case she is not to be examin'd.

A Fine which passeth an Estate, ought not to be receiv'd, if the Feme be not examin'd ; but if the Fine be receiv'd and recorded, the Feme Covert or her Heirs shall not be permitted to aver that she was not examin'd, nor assented ; for this would be against the Record of the Court, and tend to weaken the general Assurances of the Realm. 2 *Inst.* 515.

Fine and Non-claim of the Wife's Land shall Bar the Husband, who suffer'd five Years to pass, and all claiming under him, and the Wife herself during the Coverture ; but she shall have a new five Years after the Death of her Husband. *Cro. Car.* 200.

A Man seized of Lands in Fee takes a Wife, and after levies a Fine, and the Proclamations are made, and the five Years pass in his Life ; then he dies, and after his Death other five Years pass, and afterwards the Wife brought her Writ of Dower ; she shall be barred ; for as she had Title at the Time of the Fine levied, she shall be bound by Non-claim for five Years after her Title consummate. *Moor* 53.

Feme Covert is Tenant for Life, Remainder in Fee to the Son, which she shall have ; and he in Reversion before the Birth of the Son bargains and sells the Land, and levies a Fine of it to the Baron and Feme, the particular Estate of the Wife is drowned in the Reversion, and the contingent Remainder is destroy'd. 2 *Sand.* 386.



If the Husband seized in Tail of Land for valuable Consideration, bargain and sell this to another in Fee, and Covenant, that he and his Wife shall levy a Fine for better Assurance ; and it is agreed, that 30 l. Part of the Consideration Money shall be paid to the Husband upon the Cognizance of the Fine by the Baron and Feme ; and after they acknowledge a Fine before the Judge in the Circuit, and the 30 l. is paid to and receiv'd by the Wife, the Husband being sick in Bed, and the Husband dies before the Term, and upon this the Wife stays the passing of the Fine, and after brings a Writ of Dower ; the Bargainee shall not have any Remedy in Equity against the Dower, for that it is a Maxim in Law, that the Feme Covert shall not be bound without a Fine. But the Court agreed, if the Wife had any personal Estate, as Executrix or Administratrix to her Husband, she shall be liable for this ; and thereupon a Commission was granted to enquire of Assets. 1 *Rolls Abr.* 375.

If Baron and Feme levy a Fine of Lands, whereof the Husband is seized in Right of his Wife, this shall not be receiv'd with Warranty by them and the Heirs of the Husband ; but it shall be receiv'd by them and the Heirs of the Wife, because it is the Inheritance of the Wife. 44 *Ed.* 3.

Baron and Feme by Fine Grant Land to A. for 99 Years, if he so long live, and by the same Fine Warrant the Lands to A. *contra omnes homines toto termino prædicto* ; the Baron dies. *Per Curiam*, a good Action of Covenant lies against the Wife upon her

Warranty in the Fine, altho' she was Covert Baron: For when the Warranty is only annex'd to an Estate for Years, it is no more than a Covenant for Damages personal; and they are bound to Warrant the Land, and to answer in Value of their own proper Estates. 2 Saund. 180.

*A.* makes an Estate to Friends in Trust, for the Use of his Wife, to Commence after his Death, the Wife joins in a Fine with her Husband of the Land leased in Trust; this Fine shall Dock the Trust, and there being an Extent upon the Land leased, this Trust shall not prevent the Extent by reason of the Fine.

If *A. B.* with the Wife of another Person levy a Fine by the Name of *A. B.* and *E.* his Wife, of the Inheritance of the Feme, and he who is the Husband comes into Court and shews the Matter, and prays that the Fine may not pass; yet the Court will Proceed; for the Court shall not determine the Loyalty of Matrimony; but if the Truth be so, that she is not the Wife of *A. B.* it shall not injure the Husband. Trin. 7. Jac.

A Man seized in Fee levies a Fine to the use of himself for Life, and after to the Use of such a Wife as he shall Marry, and shall survive him; he and his Wife levy a Fine to a Stranger; the Baron dies, and the Feme survives; she by her Fine hath bar'd her possibility by Estoppel. Moor. 557.

Tenant for Life, Remainder to Baron and Feme, and their Heirs, the Baron and Feme suffer a Recovery: The Question was, if the Heirs of the Wife are bound by this Recovery; for the Feme being Covert, it was con-

ceiv'd she was not Tenant to the Præcipe, because it appears not that she was examin'd. Adjudg'd that it is not necessary to examine a Feme Covert upon a Recovery, tho' it be prudential to do it; but in a Fine it is otherwise, because there is no Recompence in Value; and the Feme here is Tenant to the Præcipe, and she shall be estopped to speak against the Recovery, for she joins in it with her Husband, and there is no Default made by the Baron; and now the Record is perfect, and a Thing contrary to it is not to be averr'd; but before the Record was perfect she might have pleaded; also the Recompence in Value in this Case shall go to the Heirs of the Wife, and the Tenant for Life is bound by this Recovery, and the Feme is privy thereto: If a Stranger had been Tenant to the Præcipe, and the Baron and Feme had been vouch'd, the Feme had been bound. *Stile* 319. But it was the Opinion of Chief Justice *Bridgman*, that a Feme Covert ought to be privately examin'd in a common Recovery, tho' the Practice was otherwise, which was a Fault, and ought to be corrected; *Sid.* 11. And so is my Lord *Coke's* Opinion. 10 Co. 45.

If the Baron seized in Right of his Wife for Life, the Remainder in Tail to B. Remainder to C. and the Husband bargains and sells the Land to another, against whom a Præcipe is brought, who voucheth him in Remainder, and so a common Recovery passeth; this shall bind the Remainder, but not the Wife, because the Bargainee was a good Tenant to the Præcipe. 2 *Rolls Abr.* 394.

Baron and Feme seized to them and the Heirs Males of the Body of the Baron, Remainder in Tail to another, the Reversion to the right Heirs of the Baron; the Baron levies a Fine, the Conuzee suffers a Recovery, and vouches the Baron, who vouches the common Vouchee: This Recovery by the Privy shall bind the Tail. Here, altho' the Wife was not vouch'd, who had an Estate for Life with her Husband; and tho' the Estate of the Wife is not recontinu'd, yet the Husband as Voucher, shall be in Judgment of Law in Privy of the Estate-Tail which he once had; and the Estate of the Wife by the Husband's Fine is put to a Right, so that the Husband comes in as sole Tenant in Tail: It would be otherwise if the Baron and Feme were seized to them and the Heirs of their two Bodies, with Remainders over. 3 Co. Rep. 6.

But an Estate is made to Baron and Feme jointly, and to the Heirs of the Body of the Husband, &c. and a common Recovery is had against the Baron, who vouches the common Vouchee; the Baron survives his Wife, and dies without Issue; this is not good to Bar the Remainders: For the Baron had not Power to sever the Jointure, nor is he, during the Life of his Wife, seized by Force of the Tail, so that the Præcipe being brought against him only, the Conveyance cannot for any Part Enure to the Estate-Tail, or to the Remainder; to all the Estate it cannot Enure, because the Wife had a joint Estate with him who was no Party to the Recovery; and for a Moiety it cannot be good, for there are no Moieties between Baron and Feme. 3 Co. 5.

Where Baron and Feme are vouch'd, it shall



be intended to be in the Right of his Wife. Four Husbands and their Wives are vouch'd in a Recovery, and the Plaintiff brought his Writ of Error as Heir to one of the Husbands; it was adjudg'd ill; he ought to have brought it as Heir to one of the Wives.

If a common Recovery be suffered, and the Baron and Feme, as in Right of the Wife, (the Feme being within Age) are vouch'd, and they appear by Attorney, and vouch over, and so a Recovery is had, this is Error; for tho' the Husband be of full Age, yet the Wife being within Age, she ought to appear by Guardian. *Hill. 17 Jac. Rolls 1 Abr. 288. By Dyer 290, 366.* The Appearance of a Feme Covert, in a Recovery, within Age by Attorney is Error; and tho' it may be objected, that the Husband is of full Age, and he may make Attorney for himself and his Wife, the Law is not so; for the Rule is, that the Husband cannot give away or lose the Inheritance of the Wife; but it must be given or lost by herself or her own Act, and she ought to appear by Guardian notwithstanding the full Age of the Husband, who is to be join'd for Conformity with her. *Sid. 322.*

If a Man seized of Lands in the Right of his Wife, Lets the same to another for Term of Life, now the Husband has the Reversion of the Fee-simple, being a Discontinuance to the Wife: But if the Husband dies, leaving the Wife and Tenant for Life, and the Reversion descend to the Heir of the Baron, and he grants the Reversion to another in Fee, and the Tenant attorns, and then the  
Te-

Tenant for Life dies, and the Grantee of the Reversion enters; this is no Discontinuance to the Wife, but she may well enter upon the Grantee, because the Grantor had nothing at the Time of the Grant, in the Right of the Wife. *Lit. Sect.* 639. Though if the Baron and Feme, in such Case join in a Lease by Deed, the Reversion is not discontinued, but remains in the Wife; and yet it was at Common Law, a Discontinuance for Life. *1 Co. Inst.* 339.

To a Lease of the Wife's Land, which may be made for three Lives, or twenty-one Years, or under, reserving the ancient Rent, or more, she must be a Party, and seal the Indenture; and the Rent must be reserved to Husband and Wife, and the Heirs of the Wife; and the Husband cannot alien, discharge, or grant away the Rent, but during the Coverture only. *Stat. 32 H. 8. Co. Lit.* 44, 45.

Leases made with these Qualifications, shall bind the Wife and her Heirs; and if they are not warranted by this Statute, yet they shall be good against the Husband.

But the Husband purchased Lands to him and his Wife, and their Heirs, and afterwards he let those Lands to two Persons for sixty Years, if they lived so long, rendring Rent, without making the Wife a Party to the Lease, this Lease shall bind the Wife by the *Stat. 32 H. 8.* for it is not within the Proviso, as the sole Inheritance of the Wife. *Cro. Car.* 22.

A possessed of a Term for an hundred Years by Deed indented, mentioned to be made between him and B. his Wife, of the

one Part; but she never sealed the Deed. *A.* and *B.* grant and assign the Term to *C.* yielding and paying, during the Term to *A.* and *B.* and the Survivor of them, and the Assigns of the Survivor of them, 10*l.* Rent *per Annum*; upon Condition that if the Rent be not paid, it shall be lawful for him and his Wife, and the Survivor of them, and the Assigns of the Survivor of them to re-enter, and after *A.* dies, neither his Administrator nor *B.* the Wife, shall have the Rent, or enter for the Condition broken. The Wife shall not have the Rent, because she sealed not the Deed, and so the Rent cannot be reserved to her, being a Stranger; so it is void as to her; and the Administrator of *A.* shall not have this as Assignee of *A.* during the Life of *B.* inasmuch as this was not intended as a Limitation to determine by the Death of *B.* but to be reserved to *B.* herself, and so the Assignee in Law of the Husband cannot claim it, because he did not survive the Wife. And the Condition in this Case, runs with the Rent; therefore the Rent being gone, the Condition is gone also; and although the Rent be reserved during the Term, yet the Words *To A. B.* restrain it. 2 *Roll. Abn.* 430. See 2 *Saund.* 386.

A Man possessed of a Term for Years, in the Right of his Wife, made a Lease for Years, rendring Rent to him, his Executors and Assigns, and died, the Rent is gone; but by *Montague*, the Wife may be relieved in Chancery. *Godb.* 279.

In this Case it was held, that the Wife should have the Residue of the Term, but the Executors of the Husband shall have the Rent;

Rent ; for it was not incident to the Reversion, the Wife not being a Party to the Lease. A Man possessed of a Term of twenty Years, in Right of his Wife, made a Lease for ten Years, rendring Rent to him, his Executors and Assigns, and then died. By *Houghton and Crook*, the Rent is gone ; though it was agreed, if the Husband, after the Lease made, had granted over the Reversion, the Grantee should not have it. *Blackstone and Heath's Case*.

The Baron, by the Intermarriage, hath full Power over the Wife's Term, to alien it ; and if the Wife dies, the Term survives to the Husband ; and if the Husband dies, it survives to the Wife, unless he dispose thereof ; but the Husband can make no Disposition thereof by Will. *Plowd. 416.*

A Man possessed of a Term for Years, in Right of his Wife, made a Lease for Years of the same Land, to begin after his Decease ; and afterwards he died, and the Wife survived him ; the Question was, If the Wife shall have this, or the Lessee ? And adjudged, that the Lessee shall have it ; for as the Husband, during his Life, might contract for the Land, for the whole Term which the Wife had in it, so might he do for any Part of the Term at his Pleasure ; for if he may demise the Land for twenty-one Years, to begin presently, he may also make it to begin at any Time to come after his Death, if the Term of the Wife be not expir'd. *Pop. 5.*

A Woman conveys a Lease in Trust for her Use, and afterwards marries, in such Case it lies not in the Power of the Husband to dispose of it ; and if the Wife die, the Husband



band shall not have it, but the Executor of the Wife. *March Rep.* 45. A Lease for Years was granted to the Lessee, to the Use of the Grantor's Sister, whom he afterwards should marry; who married her accordingly, and then died. The Feme takes the Plaintiff to Husband, and afterwards she died; the Defendant takes Administration of the Plaintiff's Wife's Goods, and the Plaintiff sued the Defendant in Chancery, to have the Term; and it was decreed, by Advice of all the Judges in *England*, that neither the Term nor the Use belonged to the Husband. *Cro. El.* 466.

The Wife having assigned her Term, in Trust for herself, before Marriage, the Husband, without joining with the Trustees, mortgages the Trust; and the Husband being dead, the Mortgagee exhibits his Bill to have the Lands conveyed to him, or that they should redeem, and the Court dismissed the Plaintiff's Bill; for it has been the constant Practice of the Court, ever since Queen *Elizabeth's* Time, to set aside all Incumbrances, and Acts of the Husband, upon the Trust in the Wife's Term, and that he shall not charge or grant it away. *Chanc. Cases* 225.

Baron and Feme mortgage their Interest in the Wife's Term; and before the Day of Payment the Wife died, and the Husband paid the Money at the Day, in Redemption of the Mortgage, and then enter'd and took another Wife, and made her Executrix, who enter'd. R. took Administration to the Goods of the first Wife, and entered upon the Lessee, on whom the second Wife entered, and made

made the Lease to the Plaintiff, and Judgment was given for the Plaintiff. Here, tho' the Lease was at first the Wife's, and the Husband was possessed in her Right, so that if he had purchased the Fee-simple, the Lease had not been extinct; yet by the Intermarriage he hath full Power to alien it; and if he survive the Wife, he is to enjoy it against her Executors and Administrators. 1 Roll. Abr. 344.

Feme Executrix hath a Term, and takes Husband, and the Husband purchases the Reversion, in this Case, the Term is extinct, as to her, if she survive; but as to all Strangers it shall be accounted Assets in her Hands. Moor 54.

*A.* and his Wife were possessed, in Right of the Wife, of a Term, which she had as Administratrix to her first Husband *C.* and being indebted, by Contract, granted the Term to *D.* to the Use of *A.* and his Wife, for their Lives, and after to the Use of *D.* himself; *A.* sued for this Debt, and Recovery against him; and the Sheriff, by *Fieri fac'* sold the Term to the Defendant. The Grant of the Term is not void by Stat. 3 H. 7. as made to defraud Creditors; for this Grant is not to avoid Creditors, the Term being in Right of the Wife, as Administratrix, if it so continued in the Hands of *A.* and had never been granted; this was not extendible for the Debt of *A.* and if *A.* himself had it as Executor, it would not have been extendible for his proper Debt; and Fraud shall not be intended, except expressly found. *Coleman's Case.*

A Feme

A Feme Covert Executrix, may have a Term, Goods or Chattels Real. And in Debt the Husband is charged in Right of his Wife, as Executrix ; and when Judgment is given against them, it shall be *De bonis suis propriis*. Cro. Car. 519.

Lease was granted to J. S. who assigned it over to K. and K. by his Will, devised the same to his Wife, and made her Executrix also ; and she afterwards took one W. to Husband, and died, W. takes out Letters of Administration of the Goods and Chattels of his Wife, and leased it to the Plaintiff ; the Question was, If the Wife be in as Executrix, or Legatee ; for until Election made, she shall not have it as Legatee. But it was proved that the said Wife, as Executrix to her Husband, had made a Lease by Deed, reciting thereby, that the Husband was possessed in Right of his Wife, as Executrix of her first Husband. *Per Curiam* : This is an express Claim, as Executrix ; and then when the Wife dies, if the Husband would have Advantage of it, he ought to take out Letters of Administration of the Goods of the first Husband. 1 Leon. 215.

Two Femes are Jointenants of a Lease for Years, one of them takes Husband and dies, the Term shall survive ; for though all Chattels Real are given to the Husband, if he survive, yet the Survivor between Jointenants is the elder Title, and after the Marriage, the Wife continued sole possessed, and if the Husband die, the Feme shall have it, and not the Executors of the Husband ; *aliter* of Personal Goods. 1 Inst. 185.

Baron

Baron and Feme Jointenants for eighty Years; the Baron by Indenture, lets all the Land for seventy Years, to commence immediately after his Death; the Baron died, and the Wife survived: It was held to be a good Lease, and did bind the Feme. *Cro. El.* 287. But where the Baron and Feme are Joint Lessees for their Lives, Remainder to the Survivor of them for Years, the Baron grants over this Term, and dies; this Grant is void, because there was nothing in either of them to grant over, until there was a Survivor. *Poph.* 5.

The Baron and Feme (in Right of the Feme) and a third Person, were Jointenants for the Lives of the Wife, and of the third Person; the Baron and Feme by Indenture, let the Moiety for twenty-one Years, the Feme dies, and the surviving Jointenant enters; Lessee brings Trespass, and recovers; for the Lease is good, and is as a Lease made by her, until she after Coverture, or one who claims in Privy by her, avoids it by Entry. It is not void by the Death of the Baron, but voidable only; and the Avoidance ought to be by Entry; and this cannot be by the Jointenant's Survivor, he being Paramount to the Wife, and so the Lease shall bind as long as any Jointenant is alive. *Cro. Jac.* 417.

Baron and Feme seised of Lands in the Right of the Wife, levied a Fine to the Use of themselves for their Lives, and afterwards to the Use of the Heirs of the Wife; proviso that it shall and may be lawful for the Baron and Feme, at any Time during their Lives, to make Leases for one and twenty Years,



Years, or three Lives. The Wife being Covert, made a Lease for one and twenty Years, and adjudged a good Lease against the Husband; though it was made when she was a Feme Covert, and by her alone; and this by Virtue of the Proviso. *Godb. 327. sed Quære.*

The Husband makes a Lease of the Wife's Land, and dies, the Lease is voidable by the Entry of the Wife after his Death. *Cro. Jac. 332.*

A Lease is made by Baron and Feme, *in jure Uxoris*, and he dies; if she accepts the Rent, it is good against her; for by her own Act she hath affirm'd it, and the Estate continues. *Cro. Jac. 563.*

Baron and Feme make a Lease by Indenture, for Term of Years, rendring Rent, the Lessee enters, the Husband before the Day of Payment of the Rent, dies; and the Wife also, before the Day of Payment, takes a second Husband, who accepts the Rent at the Day, and dies; the Wife may not oust the Termor: She might have avoided the Term before the Day, at her Pleasure; but that Liberty she had assigned to her second Husband. *Dyer 159.*

A Man seised in Fee, in the Right of his Wife, had Issue by her, and so is Tenant by the Curtesy; and after makes a Lease for Years, reserving Rent, and then the Wife dies, the Husband likewise dying before the End of the Term; this Lease is void and ended in the Law, before any Entry of the next Heir of the Wife; forasmuch as he cannot make this good by any Acceptance of the

the Rent, the Lease being made only by the Husband. 1 *Roll. Abr.* 380.

Baron and Feme seised of Land in Right of the Wife, the Husband alone makes a Lease for Years, and afterwards Baron and Feme levy a Fine, and they after that both die, the Conusee shall avoid the Lease. 1 *Leon.* 247.

If a Feme Sole, being a Widow seised of Lands, secretly takes Husband, and conceals her Marriage, and so continuing under the Notion of a Widow, makes Leases of divers Parcels of Land, and afterwards the Time of her Marriage is published; the Husband in Equity sought to avoid the Leases, but was denied Relief, and decreed to confirm the Leases during the Term. *Chanc. Rep.*

When a Feme Covert receives from a Lessee any Rent, the Lessee not having Notice of the Coverture, there being no Countermand of Payment to the Wife; *per Curiam*, This Payment of Rent to the Wife, is no Payment, but the Husband may well demand it, and recover the same again: Though this seems to be hard upon Tenants, that they should refuse to pay the Rent, and so forfeit their Bonds of Covenants; and it is next to an Impossibility for them to Divine whether she be married. *Cro. Jac.* 621.

Land was demised to Baron and Feme for their Lives, the Remainder to the Survivor of them for Years; the Husband granted over this Term for Years, and died, the Wife shall have it, and not the Grantee; for there was nothing in the one or the other to grant over, but the Survivor. So if the Wife had died

died after the Grant, and the Baron survived, he shall have the Term against his own Grant. *Poph. 4, 5.* And if a Lease be made to Baron and Feme, for their Lives, the Remainder to the Executors of the Survivor of them; and the Husband grants the Term and dies, this shall not bar the Wife, because she had but a Possibility, and no Interest. *Co. Lit. 46.*

But if a Lease is made to Baron and Feme for their Lives, with Remainder to the Heirs of the Survivor, it is a good Remainder, notwithstanding the Uncertainty; and in that Case the Husband, after the Death of the Wife, shall have Judgment to recover the Land. *Godb. 139.*

A Lease is granted to Baron and Feme, during the Coverture, and the Baron sows the Land, and after they are divorced *causa præ-contractus*, the Baron shall have the Corn, because the Judgment is an Act of Law. *5 Coke 116.*

If an Husband, seised in Fee, or for Life, in the Right of his Wife, sows the Land, and dies, or his Wife dies before Severance, yet he or his Executors shall have the Corn. *1 Inst. 55.*

A Feme seised in Fee, or for Life, of Land, sows it, and after takes Husband, who dies before Severance, the Wife shall have the Corn, and not the Executor or Administrator of the Husband. And where Baron and Feme are Jointenants, and the Baron sows the Land, the Wife surviving shall have the Emblements. *Godb. 189.*

A Feme Covert is Tenant for Life, Remainder to another, and Hops are growing  
out

out of the ancient Roots on the Land, the Feme dies a little before the gathering of the Hops; the Question was, Whether these Hops appertain to the Husband of the Feme, or to him in Remainder? The Court held, that they are like Emblements, which shall go to the Husband or Executor of the Tenant for Life, and not to him in Remainder; for they are such Things as accrue by Manurance and Industry of the Owner, and not to be compared to Apples and Nuts, which grow of themselves. *Cro. Car. 515.*

If a Man possessed of a Manor for ninety-nine Years, makes his Will, and devises it to *A.* his Wife, for her Life, to set Lease, or make Estates out of it, in as ample Manner as if the Devisor were living, during the said Term; and after the Death of *A.* devises it to *B.* his Daughter, and to the Heirs of her Body begotten, and dies: *A.* being Executrix, consents to the Legacy, and after makes a Lease of a Tenement, Parcel of the Manor, to *C.* for ninety-nine Years, if three Lives shall so long live, and dies; this is a good Lease against *B.* the Daughter, altho' it was objected, that by this Clause, she had only Power to dispose of it during her Life. *2 Roll. Abr. 261.*

A Man may devise Lands to the Wife, though they are but one Person in Law; for the Devise taketh not Effect, till after his Decease. But though a Last Will doth not take Effect till after Death; yet if a Feme Covert be seised of Land in Fee, she cannot devise the same to her Husband; because at the Time of the making her Will, she was

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sub



*sub potestate viri*, and the Law shall intend it to be done by the Coercion of the Husband. 1 *Inst.* 112.

If a Man devise a Term to his Wife, if she so long live unmarried; and if she marry, then the Wife shall have a Rent out of the Land, and make his Wife Executrix, and die, and the Wife consents to the Legacy of the Term, and enters upon it, and after takes Husband, this Consent to the Legacy of the Term, is also a Consent to the Rent, when the Contingent happens. *Mich.* 13 *Jac.* B. R.

But it has been held, that a Feme Covert cannot assent to a Legacy; for if she should have Power to assent, or disassent to a Legacy, then if a Term be devised to a Feme for Life, (who is also Executrix) Remainder to *A. B.* if the Feme takes *A. B.* to Husband, it would be in her Power to affirm or destroy this Devise, which would be mischievous. *Sid.* 188.

A Feme Covert may make a Will, if her Husband agree to it after her Death. *Mich.* 8 *Jac.*

And a Feme Covert may not devise Things in Action, which she hath, without the Consent or Agreement of the Husband. 4 *H.* 6.

A Feme Covert, Executrix, cannot devise any Goods she has as Executrix, without her Husband's Assent or Agreement afterwards, although she may make an Executor without his Assent. *Mich.* 8 *Jac.*

Regularly a Feme Covert may not make a Will; and therefore where a Feme Covert made her Will, by which she devised 30 *l.* *per Annum* out of her own Estate, to a Charitable

ritable Use ; the Heir submits himself to an Award, and is bound to perform it ; the Arbitrators award Payment of it, yet by Decree of Chancery, the Heir was Discharged of the Payment, and the Devise declared void *ab initio*. *Cro. Eliz.* 27.

But though a Wife cannot make her Will, without her Husband's Assent, she may make a Writing or Declaration, in the Nature of her Will, and it shall be good. And the Husband may bind himself by Covenant or Bond, to permit his Wife, by Will, to dispose of Legacies, &c. Debt upon Bond conditioned ; whereas the Defendant was to espouse *A. B.* a Widow, if the Marriage took Effect, and he should survive the said *A. B.* there was to be paid to the Obligee 300*l.* to and for such Uses and Purposes as she the said *A. B.* by any Writing under her Hand and Seal, subscribed and published in the Presence of two Witnesses, should nominate, declare and appoint, &c. The Defendant pleads she did not limit, declare or appoint any Use or Purpose for the Employment of the Money. The Plaintiff replies, that she, by her Will in Writing, sealed and published by her, in the Presence of two Witnesses (naming their Names) did appoint such Sums to be paid, and that the Defendant had not paid them ; and on Arrest, Judgment *pro Quer.* *Tilley and Pierce's Case. Cro. Car.* 376.

The Condition of a Bond was, Whereas *A. B.* had taken *C. D.* to Wife, being possessed of divers Goods, if he should permit his said Wife to make a Will, and dispose

in Legacies, as much as she would, not exceeding 100*l.* and pay and perform what she appointed; That then, &c. the Defendant pleads she made not any Will; and upon Issue it was found that she made a Will, and did dispose of divers Legacies, not exceeding 100*l.* but that she was Covert at the Time of making the Will; and Judgment *pro Quer.* for it is a Will within the Intent of the Condition, and it is her Appointment, which the Husband is bound to perform. *Cro. Car.* 219.

The like Case is in *Cro. Car.* 597. The Condition was to permit his Wife to make a Will of her first Husband's Goods, to the Value of 100*l.* to be paid within one Year after her Decease; &c. And the Defendant pleaded that he permitted his Wife to make a Will; but did not plead that he paid the Money accordingly; and the Plea was adjudged ill. *Sherman and Lilly.*

Articles of Agreement were made before Marriage, That the Wife shall make a Will, and the Husband pay the Legacies devised. *Per Curiam,* Her Will is void, and the Husband bound only by the Articles. *Mod. Rep.* 211.

If a Feme Covert make a Will, and devise Goods to another, and the Husband after her Death, deliver the Goods to the Devisee accordingly; this shall bind him. 26 *E.3.*

A Feme Sole makes her Will, and devises her Land to a certain Person; whom she afterwards marries, if she dies in his Life-time, the Will is void. 4 *Rep.* 60.

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## Of Divorces, separate Maintenances, Elopements, &c.

**A**S to Divorce, it is where a Man and his Wife, lawfully espoused, are adjudged by Law to live separate, for sufficient Reasons plainly proved.

And the Causes of Divorces, which dissolve Matrimony, are the five following :

1. *Causa Precontractus,*
2. *Causa Frigiditatis,*
3. *Causa Consanguinitatis,*
4. *Causa Affinitatis,*
5. *Causa scævitiæ sive Metus.*

These Divorces declare the Marriage void *ab initio*, and Bastardise the Issue. But if two are divorced for Consanguinity, and they were Ignorant of it, the Issue shall be Legitimate. 1 Roll. Rep. 212.

If a Man contract with a Woman to marry her, and after he marries another Woman, the first Woman sues in the Spiritual Court, and it is by Sentence adjudged that the Man and first Woman are Baron and Feme. *Sid.* 13. Sir Robert Paine's Case. And Noy held, that if the Wife be divorced from her Husband, *causa præcontractus* made with another by *verba de præsentis*; that in this Case, immediately by Sentence given in Court, the Marriage shall be Consummate between the



Woman and her first Husband, without any Rites *in facie Ecclesiæ*.

Two were pre-contracted, one after is espoused to a Stranger, and afterwards sued in the Spiritual Court, and Sentence is there given, that they shall marry according to the Precontract, and the Woman marries; this is good without Divorce or Consent of the Husband, and their Issue is not a Bastard. *Moor* 169.

A Man contracts to marry with *A.* and marries *B.* *A.* sues him in the Spiritual Court, and Sentence is given, That he shall espouse *A.* and cohabit with her, which he doth, and they have Issue, then he dies; and adjudged that the Issue shall inherit, though there was no Divorce from the Marriage of *B.* *Moor* Case 303.

*Causa Frigiditatis*, is in Case of Impotency, where a Man hath *perpetuam Impotentiam generationis*.

Sentence of Divorce was given against one *Bury*, *causa frigiditatis naturalis, ad sectam Uxoris suæ*; and the Wife was after married to *Carey*, by whom she had Issue; and she gave all her Inheritance to *Carey*, her second Husband; and *Bury* was also married to another Woman, by whom he had Issue. In this Case, the Opinion of the Doctors was, That then the Persons shall be compelled to cohabit together as Man and Wife; *Eo quod sancta Ecclesia decepta fuit in priori judicio*. *Dyer* 179. And 37 *El.* A Feme sues a divorce for Frigidity, and after the Husband marries another Wife, by whom he had Issue;

sue; adjudg'd, that the second Marriage was void. *Stafford's Case*.

*Causa affinitatis & consanguinitatis*, relates to Marriages with Kindred and Relations; as where a Man marries his Sister, Daughter, Father's Sister, Son's Daughter, his Brother's Wife, &c. prohibited by Law.

One *Mann* married h's Wife's Sister's Daughter; for which he was sued before the High Commissioners; and though this was not expressly forbidden, yet because Degrees, more remote are forbidden, they gave Sentence of Divorce. *Cro. Eliz.* 298.

*Causa fœvitie sive Metus*; If the Husband take from his Wife Apparel, and other Necessaries, it is a good Foundation to sue a Divorce, *causa fœvitie*.

And if one of them be in Danger of Poisoning from the other, this is good Cause to pronounce Sentence of Separation.

A Woman lawfully espoused to her Husband, sued a Divorce, *propter fœvitiam*, and it was *separamus a Mensa & Thoro*; but no Word of *Divorciamus*. She married again, and was prosecuted for *Poligamy*; and it was clearly agreed by the Civilians, that the second Marriage was unlawful, and she might be in Danger of the Stat. 1 Jac. 1. but it was not adjudged. Though in my Lord *Ross's Case*, it was the Opinion, that they might marry again. *Cro. Car.* 461.

A Divorce *a Mensa & Thoro*, or *Causa Adulterii*, doth not dissolve the Marriage; for it is subsequent to the Marriage, as the others are precedent. And in Case of Divorce *causa Adulterii*, the Coverture continues

between the Parties; if the Husband after such Divorce release an Obligation, or any other Duty due to the Wife before Coverture, it hath been held a good Release; which proves the Continuance of the Marriage.

And therefore, in *Littleton's Case*, if a Lease is made to the Husband and Wife, to have and to hold to them, during the Coverture between them, they have an Estate for their two Lives, upon Condition, (*viz.*) If one of them die, or there be a Divorce between them, then it shall be lawful for the Lessor and his Heirs to enter. *Lit. Sect. 380.* *Littleton* here speaks of such Divorce as dissolves the Marriage *a vinculo Matrimonii*, for though the Husband and Wife are divorced *causa Adulterii*, yet the Freehold continues, because the Coverture continueth. *Co. Lit. 235.*

Baron and Feme are divorced *a vinculo Matrimonii*, Dower ceases; and if it be by Reason of *Precontract*, Consanguinity or Affinity, the Children begotten between them are Bastards. But if the Divorce be only *a Mensa & Thoro*, it doth not debar the Woman of her Dower, or Bastardise the Issue, &c. *1 Inst. 235. 7 Rep. 43.*

If a Marriage *de facto*, be voidable by Divorce, in Respect of Consanguinity, Precontract, or the like, whereby the Marriage might have been dissolved, and the Parties freed *a vinculo Matrimonii*; yet if the Husband die before any Divorce, in this Case, because it cannot be avoided, the Wife *de facto* shall be endowed;

endowed; for this is *Legitimum Matrimonium quoad dotem*. 1 Inst. 33.

A Sentence of Divorce may be repealed in the Spiritual Court, by Suit, after the Death of the Parties. But if any of them die before the Sentence of Divorce is given, they cannot sue to declare the Marriage void, and Bastardise the Issue; for the Trial belongs originally to the Common Law, where there is no Disability by Sentence in the Spiritual Court. 7 Rep. 44.

A Divorce shall continue so long as the Sentence is in Force, and unrepealed; and the Issue of that Marriage shall be Bastards. Also the Issue of the second Marriage may inherit, until the Sentence be repealed. 2 Leon. 207.

Where a Man and his Wife are divorced, and she is an Inheritrix, in this Case, mean Acts done shall not be reversed by the Divorce, as Receipt of Rent, Presentation to a Benefice, Gift of the Goods of the Wife, &c. though it is otherwise of Inheritances, if the Husband had discontinued or charged the Land. *Baron and Feme*, p. 379.

A Woman was divorced *Causa Adulterii* in the Husband; the Wife sued in the Spiritual Court for a Legacy given to her by a Stranger; and the Defendant pleaded a Release made by the Husband, after the Divorce. *Per Curiam*; This Divorce is not a *Dissolutio a vinculo Matrimonii*; so as that either of them may marry again; but it is a Separation only, and they are not compellable to cohabit; but if they will they may. And in regard this Separation doth not avoid the Marriage



Marriage absolutely, but they still remain Man and Wife, the Release of the Husband is good to extinguish the Duty. And the Books which say that the Feme shall have her Goods after a Divorce, are to be intended of an absolute Divorce *ab initio*. Cro. El. 908.

On a Divorce *a vinculo Matrimonii*, the Parties may marry again. Where a Man was divorced for the Incontinency of his Wife, and after married another, this was adjudged a void Marriage; for the Divorce was only *a Mensa & Thoro*, not *a vinculo Matrimonii*. Moor 942. But in Divorces for Adultery, several Acts of Parliament have allowed the innocent Party to marry again.

If a Feme *post annos nobiles*, i. e. at Twelve Years of Age, contract Matrimony with *A. B.* and afterwards marry with *C. D.* and after she has passed the Age of Sixteen, her Marriage with *C. D.* is dissolved *Causa præcontractus*; by this Divorce there is a Nullity of the Marriage from the Beginning: And if she had any Goods or Personal Estate, she ought to have the same again; for *Cessante causa cessat effectus*. But if he had given them away or sold them before, without Collusion, then there could be no Remedy; though if it were by Collusion, the Wife might have averred the same. And she may recover her Goods, whereof the Property may be known by Action of Detinue; and the rest that are in Money, she may sue for by the Spiritual Law, or in the Chancery. Dyer 13. 1 Nels. Abr. 675.

If

If the Husband aliens the Land of the Wife, and after they are divorced *Causa præcontractus*, or any other Cause which dissolves a *vinculo*, the Wife, during the Life of the Baron, may enter and have her Lands by the Stat. 32 H. 8.

And if Baron and Feme purchase Lands jointly, and are disseised, then the Baron releases, and after they are divorced; here in this Case, the Feme shall have a Moiety, although there were not Moieties before; for the Divorce converted it into Moieties. By Divorce, an Estate-Tail of Baron and Feme may be extinct. *Godb.* 18.

If a Man be bound in an Obligation to a Feme Sole, and after she marries him, and after that she is divorced, she may then have an Action, which by the Marriage was suspended.

A Feme Covert may sue without her Husband, for her separate Maintenance. And a Woman, under Separation from her Husband, must sue by her next Friend. She may sue her Husband in her own Name, for Alimony. *Mod. Cases* 35. *Wood's Inst.* 62.

Alimony is that Allowance for Maintenance, which a married Woman is entitled to upon any occasional Separation from her Husband; except in the Cases of Elopement and Adultery; and the Spiritual Court is the proper Court to sue in for it; where a Man may be sued for ill Usage of his Wife, and be ordered to pay her so much *per Week* Alimony, which was anciently called *Rationabile Estoverium*. 12 Rep. 30. Moor 874.

172 Of feme Coverts: D2,

Baron and Feme by Agreement separated and liv'd apart, and it was Agreed that the Wife should have 150*l.* per Ann. separate Maintenance; and out of which she had sav'd some Money, put it out to Interest taking Bonds in a Friend's Name, and afterwards disposed thereof by Will: This was in Chancery establish'd a good Disposition. *Chan. Caf.* 118.

The Lord *Holles's* Lady lent 100*l.* to a Person, and in the Note which was first given for it, was written that the Money should be dispos'd as the said Lady *Holles* should direct: An Action at Law being brought for this Money, it was barr'd by the Statute of Limitations; then a Bill in Equity was exhibited for Relief, and in regard the Money was look'd upon as a *Depositum*, and a Trust thereupon for the Lady, a Decree was obtained for the same. 2 *Ventr.* 345.

Covenant to pay the Defendant's Wife, or whom she should appoint, 50*l.* a Year, as a separate Maintenance, provided she lived at such a Place as should be directed: The Defendant Pleads she did not live at the Place appointed; and the Plaintiff replies, that she was ready to live at any such Place, but that no Place was appointed; to which the Defendant demurred, as being a Condition precedent. *Per Curiam*; the Defendant should have alledg'd that she lived at such a Place, and another was appointed; for this is a Condition subsequent, the Covenant being in Pursuance of a former absolute Agreement to pass so much; and it is like the Assent of the Husband, which is intended 'till the contrary appears. 3 *Keb.* 363.

In

In Covenant : The Defendant covenanted with the Plaintiff, that *A.* Wife of the Defendant, should be permitted to live separate from him, until he and the said *A.* by Writing signed by them severally, and attested by two Witnesses, should give notice to each other that they would Cohabit: And further, that the Defendant during the Coverture, and until such Notice be given of their Desires to Cohabit as aforesaid, would pay to the Plaintiff 300*l.* *per Ann.* for Maintenance of the said *A.* at four quarterly Payments ; and sets forth, that the said *A.* from the Date of the Indenture of Covenants, to the Time of the Suit commenced, did live separate from the Defendant ; and no Notice of Cohabitation had been given during that Time of either Side, and Sues for 75*l.* one Quarter's Payment.

The Defendant pleads in Bar, that after the Indenture aforesaid, and before the Action, another Indenture was made between the Defendant and *A.* his Wife of the one Part, and the Plaintiff of the other Part ; reciting the first Indenture, and also that the Defendant and *A.* did intend to Cohabit, and did so at that Time ; and expressing, that it was the true Intent and Meaning of all the Parties to the said Indenture produc'd *ut supra*, that so long as the Defendant and *A.* should agree to Cohabit, the said annual Payment should cease : And the Plaintiff by the last Indenture covenanted, that so long as they cohabited, the Defendant should be indemnified from the Payment of the 300*l.* *per Annum.* The Plaintiff replies, they did not Cohabit *modo & forma*



*ma prout*: The Defendant demurs. Judgment was given for the Plaintiff, for the last Deed had not taken away the Effect of the former; and the Cohabitation was not according to the first Indenture, by Writing mutually signed, &c. *Gawden and Draper. 2 Ventr. 217.*

Bond conditioned, that whereas the Defendant should Marry a certain Widow, who was possess'd of divers Goods of her first Husband's, and the Goods of his Children, which the second Husband was not to meddle with; but that she and the Children should be permitted to Enjoy them, without Interruption of the Defendant. The Defendant pleads Performance: And the Plaintiff assigns for Breach, that the first Husband was possess'd of such a Shop and Goods, and that the Wife had them before her second Marriage; and that such a Day after the Marriage, the Defendant her second Husband took the said Goods into his Hands, and them detained: Verdict *pro Quer. Cro. Car. 204.*

The Wife of an improvident Husband had unknown to him, by her great Frugality, raised a large Sum of Money for the good of their Children; which she had dispos'd of for that Purpose, being no otherwise provided for: And this Disposition of the Wife the Lord Chancellor confirm'd by Decree; but afterwards upon Review, and Assistance by the Judges the Decree was reversed, as being dangerous to give a Feme Power to dispose of her Husband's Estate. *Scot and Brograve's Case, Anno 1639.* In *George's and Chancey's Case*, a Disposition by Feme Covert, of Money

ney raised out of a separate Maintenance, was adjudg'd good against the Husband. *Vide supra.*

A Feme Covert purloin'd her Husband's Goods and Money, and put the Money into other Men's Hands, who bought Lands to her Use therewith: The Heir and Executor of the Husband, sued in Equity to have the Land or Money restored. But *Egerton* Chancellor denied Relief: He said he would not Relieve the Husband, were he Living, *for he fate not there to give Relief to Fools or Buzzards, who would not keep their Money from their Wives.*

I now proceed to *Elopements* of Feme Coverts, the last Head of my Treatise.

Elopement, says a Writer of Antiquity, by the Sound of the Word and Nature of the Offence seems to be derived *a Lopex* a Fox; for it is when a Woman goes away from her Husband, and seeks her Prey far from Home, which is the Fox's Quality.

If a Woman Elope from her Husband, and live in Adultery with another, she shall lose and forfeit her Dower; unless the Husband of his own free Will suffer her to Cohabit with him, and be reconciled to the Wife: But to prove the Reconciliation, lying together several Nights, at several Places, shall not avail. Against this it was objected, that the Husband and Wife never were resident or abiding in one House together; and that the Feme continued in Adultery with one or other, as long as her Husband lived. *Et non allocatur*; for there may be many Elopements with many Reconciliations; and the Defendant

ant at his Peril must take Issue upon one.  
*Dyer* 170. Lord *Powis's* Case.

A Wife elopes from the Husband, and has a Child by another Person; if the Husband be within the four Seas at the Time, it is no Bastard by the Laws of *England*. *Hill*. 14. *Jac.* 1.

But if a Woman Elopes from her Husband, and the Husband gives publick notice of it, and declares he will not pay any Debts of hers she Contracts; if any Persons Trust her afterwards, the Husband is not liable to satisfy the Debt. 1 *Sid. Rep.* 109.

Tho' according to the Opinion of Chief Justice *Holt*, if a Wife run away and Elope from her Husband, and contract Debts, and after the Husband comes after her, and lies with her, tho' but for a Night, that will make him chargeable for the Debts of the Wife. *Pasch.* 3. *Ann. Mod. Cas.* 171.

Vide more, under *Actions against Husband and Wife*.

The

*The Argument of JUDGE HIDE  
in the Exchequer Chamber, Term.  
Trin. 15. Car. 2. in the Case of  
Manby and Scot, whether and  
in what Cases, the Husband is  
bound by the Contract of the  
Wife.*

A Feme Covert departs from her Husband against his Will, and continues absent from him divers Years; afterwards the Wife desires to Cohabit with her Husband, but he refuseth to admit her, and from that Time the Wife lives separate from him: During this Separation, the Husband forbids a Tradesman of *London* to Trust his Wife with any Goods or Wares; and yet for some Years before and afterwards he allows his Wife no Maintenance: The Tradesman contrary to the Prohibition of the Husband, sells and delivers Wares to the Wife upon Credit, at a reasonable Price; and the Wares so sold to the Wife are necessary for her, and suitable to the Degree of her Husband: The Wares are not paid for; wherefore the Tradesman brings an Action upon the Case against the Husband, and declares that the Husband was indebted to him in 40 *l.* for Wares and Merchandizes formerly to the Husband sold and deliver'd; and that the Husband in Consideration thereof, did promise to pay the said

N Money



Money: That the Husband hath not paid the same, tho' thereunto requir'd; and for that Money the Action is brought. Now, whether this Action will lie against the Husband for the Wares thus sold and delivered to the Wife, contrary to the Prohibition of the Husband, or not, is the Question?

This Case is the meanest that ever received Resolution in this Place; but as the same is now handled, it is of as great Consequence to all the King's People as any Case can be; it concerns every individual Person of both Sexes, that is, or hereafter shall be Married within this Kingdom, in the first and nearest Relation betwixt Man and Wife: It toucheth the Man in point of his Power and Dominion over his Wife, and it concerns the Woman in point of her Substance and Livelihood; and I will deliver my Opinion plainly and freely, according as I conceive the Law to be, without favouring the one, or courting the other Sex.

*First*, I hold, that the Husband shall not be charged by such a Contract, tho' he do not allow any Maintenance to his Wife. *Secondly*, admit the Husband were chargeable generally by such a Contract; yet I conceive, that this Action doth not lie for the Plaintiff, as the Declaration is, and as the Verdict is found against the Defendant in this particular Case.

For the first, every Gift, Contract or Bargain, contains an Agreement on the Behalf of the Contractor or Bargainor, that the Donee or Bargainee shall have the Things contracted for; and the other is content to take them, and so in every Contract there is a mutual Assent of the Minds of the Parties, which mu-  
tual

mutual Assent is an Agreement. *Plowd. 17. Foggasse's Case.* But a Feme Covert cannot give a mutual Assent of her Mind, nor do any Act without her Husband; for her Will and Mind (as also her self) is under and subject to the Will or Mind of her Husband; and consequently she cannot make any Bargain or Contract of her self, to bind her Husband.

In the Beginning when GOD created Woman an Help meet for Man, he said *They Two shall be one Flesh*; and thereupon our Law says, that Husband and Wife are but one Person in the Law: Presently after the Fall, the Judgment of GOD upon Woman was, *Thy Desire shall be to thy Husband, for thy Will shall be subject to thy Husband, and he shall Rule over Thee.* 3 Gen. 16. Hereupon our Law puts the Wife *Sub potestate viri*, and says, *Quod ipsa Potestatem sui non habeat, sed vir Suus*; and she is disabled to make any Grant, Contract or Bargain, without the Allowance or Consent of her Husband. *Bract. lib. 3. cap. 32. 1 Roll. 351. pl. 45, 46.* The Words of the Books and Authorities of our Law to prove this Point are observable; namely, if a Feme Covert make a Contract, or buy any Thing in the Market, or elsewhere, without the Consent of her Husband, tho' it come to the Use of the Husband, yet the Contract is void, and shall not charge the Husband; but if a Man command or Licence his Wife to buy Things necessary, or Agree that she shall buy, he shall be bound by this Command or Licence. *Old Nat. Br. 62. 21 H. 7. 70 Fitz. N. B. R. 120.* Which proves, that it is not the Buying or Contract of the Wife, which Binds or Charges the Husband,

(for that is void in itself) but the Command or Licencce of the Husband, which makes it the Contract or Bargain of the Husband.

As to my Brother *Twisden's* Argument for the Woman's Power, when he says, that all those Books are where the Wife deals or trades as a Factor to her Husband, and all grounded upon that Reason, the Words themselves prove the Contrary; for the Difference taken by all the Books is, between the Buying and Contract of the Wife, without the Knowledge or Consent of her Husband; and a Buying or Contract had by the Wife, with Allowance or Command of the Husband. In the first Case, the Buying or Contract is void; in the other, the Allowance or Command makes it good, as the Contract or Bargain of the Husband: Besides, weigh the Inconveniencies which would follow, if the Law were otherwise.

Judges, in giving their Judgments and Resolutions in Cases depending before them, are to judge of Inconveniencies as Things illegal; and an Argument *ab inconvenienti* is very strong to prove that it is against Law. *Plowd.* 279. Then examine the Inconveniencies which must ensue, if the Law were according to my Brother *Twisden* and *Tyrrel's* Opinions: If the Contract or Bargain of the Wife, made without the Allowance or Consent of the Husband, shall bind him upon Pretence of necessary Apparel, it will be in the Power of the Wife (who by the Law of God and of the Land, is put under the Power of the Husband, and is bound to live in Subjection to him) to Rule over her Husband,  
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and undo him, and it shall not be in the Power of the Husband to prevent it. For here the Wife shall be her own Carver, and Judge of the Fitness of her Apparel, of the Time when it is necessary for her to have new Cloaths, and as often as she pleases, without asking the Advice or Allowance of her Husband: And will Wives depend on the Kindness and Favours of their Husbands, or be observant towards them as they ought to be, if such a Power be put into their Hands?

Then admitting, that the Wife in Truth wants necessary Apparel, and thereupon she goes into *Ludgate Street* to a Mercer and takes up Stuff, and makes a Contract for necessary Clothes; thence she goes into *Cheapside*, and takes up Linen there in like Manner; and also goes into a third Street, and fits herself with Ribbons, and other Things suitable to her Occasions, and her Husband's Degree: This done she goes away, disposeth of the Commodities to furnish herself with Money to go Abroad to *Hide-Park*, or to Play at Gaming, or the like. Next Morning, this good Woman goes Abroad into some other Part of *London*, makes her Necessity and want of Apparel known, and takes more Wares upon Trust, as she had done the Day before; after the same Manner she goes to a third and fourth Place, and makes new Contracts for fresh Goods; none of these Tradesman knowing or imagining she was formerly furnish'd by the Others, and each of them seeing and believing her to have great need of the Commodities sold her; shall not the Husband be chargeable and liable to pay every one of



these, if the Contract of the Wife doth bind him? Certainly he is, and where this will End no Man can foresee.

As for my Brother *Tyrrel's* Saying, we may alter the Law because an Inconvenience may follow thereon, that is True: But we ought to provide against such Inconveniencies as may arise, before we adjudge or declare the Law in a particular Case in Question, whether the Law be so or not? And that is the Case here: It is objected, that the Husband is bound of Common Right, to provide for and maintain his Wife; and the Law having disabled the Wife to bind herself by her Contract, therefore the Burden shall rest upon the Husband, who by Law is bound to Maintain her: Generally the Antecedent is most true, but apply this general Proposition to our particular Case, and then see what Logick there is in the Argument. I am bound to maintain and provide for my Wife: Therefore my Wife departing from me against my Will, shall be her own Carver, and take up what Apparel she pleaseth upon Trust, without my Privity or Allowance, and I shall be bound to pay for it.

Besides, altho' it be true, that the Husband is bound to maintain his Wife, yet that is with this Limitation, *viz.* So long as she keeps the Station wherein the Law hath placed her, and she continues a Help meet unto him; for if a Woman of her own Head, without the Allowance or Judgment of the Church, which hath united them in the State of Matrimony (and which only can separate or dissolve this Union) depart from her Husband against his  
Consent,

Consent, be the Pretence what it will, she doth thereby put herself out of the Husband's Protection; so that during such unlawful Separation, she is no Part of her Husband's Care, Charge or Family.

The Husband is Head of the Wife, as fully as the King is Head of the Commonwealth; and the Wife by the Law is put *sub potestate viri*, and under his Protection, tho' he hath not *Potestatem vitæ & necis* over her, as the King hath over his Subjects. When the Wife goes away from her Husband against his Will, she forsakes and deserts his Government, and assumes to govern herself contrary to the Law of God and of the Land; and therefore it is but just, that the Law for this Offence, should put her into the same Condition in the petit Commonwealth of the Household, that it puts the Subject for the like Offence in the great Commonwealth of the Realm; as the one shall be out of the King's Protection, so the other shall be out of the Protection of the Husband.

But 'tis objected by my Brother *Tyrrell*; that it appears not in whose Default this Departure was, whether in his, or her Default? To this I answer, that the Law doth not allow a Wife to depart from her Husband in any Case, or for any Cause whatsoever, of her own Head: An express Command is laid upon her by the Law of God to the contrary. *Cor. 7. 10.* And the Provision which our Law hath made for the Safeguard of the Person of a Woman, in Case of Cruelty by her Husband, and for her Maintenance, if the Husband refuses to allow it, proves that it is

not lawful for the Wife to go from her Husband upon any Pretence whatsoever.

If the Wife be in Fear or Doubt of her Husband, that he will beat or Kill her, she may have a *Supplicavit* out of the Chancery against her Husband, and cause him to find Sureties that he will not beat or Use her otherwise than in a Civil Manner, and for to Order and Rule her, &c. *F. N. B.* 179. And if the Husband refuse to give or allow necessary and fitting Maintenance unto his Wife; the Law hath provided a Remedy for her by Complaint to the Ordinary and Proceedings in the Ecclesiastical Court.

Next it is said, that the Wife in our Case did return, and desire to Cohabit with her Husband again, which he refus'd; and so she is remitted to her former Condition. Admit that be True, her Return hath not put her in a better Condition than she was before her Departure; in which Case, she could not be her own Carver, and have charged her Husband (according to her Pleasure) with Apparel, but was to be clothed in such Sort as her Husband thought fit. Besides, in our Case the Wife departed from her Husband, and liv'd from him divers Years, before the Wares Sold or the Action brought; then she desired to Cohabit with him, which he refused to admit, and from that Time she liv'd from him: This is what appears in the present Case; and is this Offence so easily purged, with a bare Desire to Cohabit, without some other Submission and Satisfaction given of her better Carriage for the Future.

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The Church declares, that one of the principal Ends for which Marriage was ordained, is for the mutual Society, Help and Comfort, which the one ought to have of the other, in Prosperity and Adversity: The Woman of her self in contracting of Marriage, makes a solemn Vow *in facie Ecclesiæ*, to live together with her Husband, in the holy State of Matrimony; to Obey him and Serve him, to Love him and keep him in Sickneſs and in Health, 'till Death them do part. Now the Wife in our Caſe, by departing from her Husband againſt his Will, breaks all the Commands of the Law of God, and her own Vow: She makes a voluntary Separation, and temporary Divorce between herſelf and her Husband; ſhe deprives him of that mutual Society, Help and Comfort which ſhe owes to him for many Years; and are all theſe Offences waſh'd away with a Deſire only to Cohabit with him, without any Contrition? No certainly, Confession and Promise of future Obedience, ought to precede her Remitter or Reſtitution to the Privileges of a Wife: And it is the Rule in the *Civil Law*, that the Wife ought to be a Penitentiary before the Husband is bound to receive her, or to give her any Maintenance; and no ſuch Thing appears in this Caſe.

It is ſaid by my Brother *Twifden*; altho' the Wife departs from her Husband, yet ſhe continues his Wife, and ſhe ought not to Starve. If a Woman be of ſo haughty a Stomach, that ſhe will chuſe to Starve, rather than Submit and be reconciled to her Husband; ſhe may take her own Choice:

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The Law is in no Default, which doth not provide for such a Wife. And if a married Woman who can have no Goods of her own to Live on, will depart from her Husband against his Will, and not submit herself unto him, let her live on Charity, or Starve in the Name of God; for in such Case the Law says, her evil Demeanor brought it upon her, and her Death ought to be imputed to her own Wickedness.

As to the Objection, that it were strange if our Law, which gives Relief in all Cases, should send a Woman unto another Law or Court to seek Remedy to have Maintenance: I Answer, it is not sending the Wife to another Law, but leaving the Case to it's proper Jurisdiction, it being of Ecclesiastical Cognizance. Is it any Strangeness or Disparagement to the Common Pleas, to send a Felon taken in the Court, to the King's Bench to be indicted? Or to the King's Bench, to send a Woman to the Common Pleas to recover her Dower? Why is it more strange for the Common Law to send a Woman to the Ordinary to determine Differences betwixt her and her Husband, touching Matters of Matrimony, than for our Courts at Common Law to write unto the Ordinary, to certify Loyalty of Marriage, or the like, where Issue is join'd on these Points in the King's Courts? For altho' the Process in the Ecclesiastical Courts be in the Names of the Bishops, yet these Courts are the King's Courts, and the Law by which they proceed is the King's Law. *5 Rep. 39. Cawdrie's Case.*

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And as in Temporal Causes, the King by the Mouth of the Judges in his Courts of Justice, determines them by the Temporal Law; so in Causes Ecclesiastical and spiritual, the Cognizance whereof belongs not to the Common Law, they are determined by the Ecclesiastical Judges, according to the King's Ecclesiastical Laws: And that Causes of Matrimony, and the Differences between Husband and Wife, relating to Alimony or Maintenance for the Wife, (which are dependant upon or incident unto Matrimony) are all of Ecclesiastical, and not secular Cognizance, is evident by the Books and Authorities of our Laws. *De Causa Testamentaria, sicut nec de Causa Matrimoniali, curia Regia se non intromittat, sed in foro Ecclesiastico debet placitum terminari. Braet. lib. 2. c. 20.* All Causes Testamentary, and of Matrimony, by the Laws and Customs of the Realm, do belong to the spiritual Jurisdiction. *Stat. 24 H. 8. cap. 2.*

The Words of the Writ of Prohibition granted in such Cases, are, *Placita de Catallis, & Debitis quæ sunt de Testamento vel Matrimonio, Spectant ad forum Ecclesiasticum.* In a Suit commenced by a Woman against her Husband, before the Commissioners for Ecclesiastical Causes for Alimony, a Prohibition was prayed and granted, because it is a Suit properly to be brought and prosecuted before the Ordinary; in which, if the Party find himself grieved, he may have Relief by Appeal unto the superior Court, and that he cannot have upon a Sentence given in the high Commission Court. *1 Cro. 220. Drake's Case.*

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But then it is objected by my Brothers *Tyrrell* and *Twisden*, that the Remedy in the Ecclesiastical Court is not sufficient: For if the Husband will not obey the Sentence of the Ordinary, it is but Excommunication for his Contumacy, and that will neither Feed nor Cloath the Wife. Are the Censures of the Church grown of so little Account with us, or is the Separation *a Communionē Fidelium*, become so contemptible, as to be slighted with *but Excommunication*? Hath our Law provided any Remedy so penal, or can it give any Judgment so fearful as this? With us the Rule is, *committitur Marechal. or Prison. de, &c. Traditur Satanae*, i. e. Take him Gaoler 'till he pay the Debt, or take him Devil 'till he obey the Church: And this Judgment is warranted by the Rule of *St. Paul*, *whom I have delivered unto Satan.* 1 Cor. 5. 5. And it is said by our Law, *Excommunicato interdicatur omnis actus Legitimus, ita quod agere non potest, nec aliquem convenire cum ipso, nec orare, nec loqui, nec palam, nec abscondite vefci licet.* Bracton lib. 5. cap. 23.

Where a Man is excommunicated by the Law of the Church, he is disabled to maintain any Action; if he sue an Action real or personal, the Tenant or Defendant may Plead, that he is excommunicated, and demand Judgment if he shall be answered. *Litt.* 201. He who is rightfully cut off from the Unity of the Church and Excommunicate, ought to be taken by the whole Multitude as a Heathen and a Publican, until he be openly reconciled by Penance. *Act.* 33. Confirm'd by 13 *Eliz.* *If he neglect to hear the Church, let him be as*

*an Heathen and Publican.* Matt. xviii. 17. Shall a Man be accurs'd, barred of the Company or Society of Christians, cut off from the Body of Christ, and accounted as a Heathen and Publican, for not allowing Maintenance to his Wife, when the Church enjoins him so to do; and shall not this be accounted a sufficient Remedy for the Wife? I fear it is the want of Religion, and due Credence to the Censures of the Church, which occasions this Objection, rather than a real want of sufficient Remedy in Law for her Relief.

The last Matter to be answered, is rather the Opinion of my before mentioned Brothers in their Arguments, than an Objection in this Case; namely, If an Action upon the Case doth not lie against the Husband upon the Contract of the Wife for necessary Apparel, an Action of Trover and Conversion lieth against him for the Stuff; and so one way or other the Husband must pay the Reckoning. If the Law should be so, it were a Conversion with a Witness; for then the Husband would seem to be *Sub potestate Faminæ*: He might say with St. Paul, *that the Head of the Woman is the Man*; but if the Wife shall lay his Headship in the Gaol, it will not be in the Power of the Husband to prevent or avoid it.

One kind of Divorce between Husband and Wife is, when an Action of Trespas is brought against them, and the Husband only appears, and Process issues against the Wife, until she be waved and outlawed, she can never purchase her Pardon, or reverse the Outlawry, unless the Husband will appear; so that if  
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the Husband please he is Divorced: If the Wife be outlawed by erroneous Process, and the Husband will not bring a Writ of Error; he may by this way be rid of his Wife, and that doth countervail a Divorce. 14 H. 6. 14. a. 18 Ed. 4. 4. a. See 1 Lev. 51. 1 Keb. 194, 637.

By these Books it appears, that the Law puts a Power in the Husband to get rid of the Wife, and provides a Remedy to tame a Shrew; but I never heard before, that the Law hath left it in the Power of the Wife to do so by her Husband: And I do not remember that my Brothers did vouch any Authority, or give any Reason for Maintenance of their Opinions; and therefore, I may with Freedom deny the Law to be as they have said. Besides, the Nature of an Action of Trover, proves that it lies not in this Case: The Count is, that the Plaintiff was possess'd of such Goods, as of his own proper Goods, and casually lost them; that the Goods came to the Defendant's Hands by finding, yet he knowing them to belong to the Plaintiff refuseth to deliver them to him, but hath converted them to his own Use. So that an Action is grounded upon a Wrong supposed to be done by the Defendant, in converting the Goods of the Plaintiff knowingly to his own Use, against the Will of the Plaintiff: And that is the Reason why the Plaintiff in that Action, must prove a Demand of the Goods, and an actual Conversion by the Defendant, or else he fails in the Action.

In an Action of the Case, for that the Defendant did find the Goods of the Plaintiff,  
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and delivered them to Persons unknown, *non deliberavit modo & forma* is no Plea, without saying *Not Guilty*, where the Thing rests in Feasance: And if the Action be, that the Plaintiff was possess'd, *ut de bonis propriis*, and the Defendant did find and Convert them to his own Use, it is no Plea, that the Plaintiff was not possess'd, &c. but he must Plead *Not Guilty* to the Misdemeanor, and give the other Matter in Evidence. 33 H. 8. *Bro. Act. Cas.* In Trover, the Plaintiff declares, that he was possess'd of the Goods, and lost them, and that the Defendant found them, and converted them to his own Use: The Defendant pleaded, that the Plaintiff did gage the Goods unto him for 10*l.* and that he detained the Goods for the Same; this is no Plea, but he ought to Plead *Not Guilty*, and give this Matter in Evidence; for the Action doth suppose a wrong, which the Defendant ought to Answer. 4 E. 6.

Now what wrong is done to the Plaintiff in our Case, when he himself sells and delivers the Goods? Put the Case of Sale made to a Man upon Credit, and the Vendee promis'd to pay for the Goods at *Michaelmas*, but fails to do it; shall the Salesman have Trover against the Vendee, because he pays not the Money at the Day? And will the Sale to this Feme Covert, alter the Case, or the Law, as to the Action? It is True, that for a Conversion by the Woman before Coverture, or by the Wife during the Coverture, an Action of Trover lies against the Husband and Wife; but this is for a Conversion by wrong, when she takes the Goods, and Coverts them against the

the Will of the Owner. 1 Cro. 254. *Remis* and *Humfrey's* Case. In Case a Man comes to buy Goods, and offers Money for them, which the Owner agrees to accept; if the Buyer takes the Goods away without Payment or Delivery by the Owner, there an Action of Trespass or Trover lies, notwithstanding the Bargain. 21 H. 7. 6. Otherwise it is; if they agree upon a Price, and the Vendor taketh the Vendee's Word for Payment, and delivers the Goods unto him; for there the Vendor is put to his Action for the Money upon the Contract, and shall not bring Trover for the Goods. 14 H. 8. 22.

If an Infant gives or sells Goods, and delivers them with his own Hand, he shall have no Action of Trespass against the Donee or Vendee, by reason of the Delivery. 21 H. 7. 39. But if an Infant give or sell Goods, and the Vendee or Donee takes them by Force on the Gift or Sale, the Infant may have an Action of Trespass against him. *Hob.* 77. 2 *Rol. Rep.* 408. *Latch* 10. So in this Case; if a Feme Covert takes Wares of a Shopkeeper against his Will, upon Pretence of Buying them, an Action lies against the Husband: Tho' if the Owner sell the Goods to the Wife upon Trust, and delivers the Goods unto her; he shall not have an Action of Trespass against the Husband, because of this Delivery.

A Man takes my Wife and Cloaths her, this amounts to a Gift of the Apparel unto her: And I may take my Wife, with the Apparel, and no Action lies against me. 11 H. 4. 83. 1 Cro. 344. By the same Reason, when

when a Man delivers Stuff, or other Wares to my Wife, knowing her to be a Feme Covert, to make Apparel, without my Privity or Allowance; this shall be construed to be a Gift of the Stuff unto her, and I shall not be charged in any Action for it. And if an Action of Trover should be brought against the Husband, in our Case; then he would be barred of all those Helps which my Brothers (who maintain that Opinion) have allowed unto him, and have made Reasons, for which an Action of the Case should lie against him on the Contract; namely, the Jurors are to Examine and Set the Price or Value, and the Necessity and Fitness of Things, with Relation to the Degree of the Husband, whereby Care is taken that the Husband shall have no wrong; for in an Action of Trover, the Jury cannot Examine any of those Matters, but are to inquire only of the Property of the Plaintiff, and the Conversion by the Defendant, and to give Damages according to the Value of the Goods: And so it shall be in the Power of the Wife to take up what she pleaseth, and to have what she lists, without Reference unto the Degree, or respect to the Estate of her Husband, and he shall be charged with it *Nolens volens*.

It is objected, that the Jury is to Judge what is fit for the Wife's Degree, that they are trusted with the Reasonableness of the Price, and are to Examine the Value; and also the Necessity of the Things or Apparel. Alas, poor Man! What a Judicature is set up here, to decide the private Difference between Husband and Wife? The Wife will



have a Velvet Gown, and a Sattin Petticoat; and the Husband thinks Mohair is as Fashionable, and fitter for his Quality: The Husband says, that a plain Lawn Gorget of 10s. pleaseth him and suits best with his Condition; but the Wife takes up at the *Exchange* a *Flanders* Lace or Point-handkerchief of 40*l*. A Jury of Mercers, Silkmen, Sempsters and Exchange-men are very excellent and indifferent Judges to decide this Controversy: It is not for their Support to be against the Wife, but to be for her; that they may put off their braided Wares to the Wife upon Trust, at their own Price, and then Sue the Husband for the Money. And are not a Jury of Drapers and Milleners bound to favour the Mercer or Exchange-men to Day, that they may do the like for them to Morrow?

Besides, what Matter of Fact (and of that only the Law hath made Jurors the Judges) is there in the Fitness of the Commodities, with respect to the Degree of the Husband? And whether this or that Thing be the most necessary for the Wife? The Matter of Fact is, to find that the Wife wanted necessary Apparel, and that she bought such and such Wares of the Plaintiff, at such a Price, to Cloath herself; and leaves the Fitness of the one, and the Reasonableness of the other to the Court, for that is Matter of Law, whereof the Jurors have no Cognizance. In Cases of Fines, Customs and Services, if the Question be, whether the same be reasonable or not? This shall be adjudg'd by the Discretion of the Justices, upon the true State of the Matter, and not by the Jury: For Reasonableness

sonableness belongs to the Cognisance of the Law. 4 Rep. 27. Co. Lit. 56. Lessee for Life, makes a Lease for Years, and dies within the Term; in an Action of Trespass brought by the first Lessor against the Lessee for Years, he ought by his Plea to set forth what Day his Lessor died, and at what Place, where the Land lies, and when he left the Possession; and so leave it to the Discretion of the Court, whether he did quit the Possession in reasonable Time or not? 22 E. 4. 18.

The Fitness or Necessity of Apparel, and the Reasonableness of the Price, shall be judged by the Court, on the Circumstances of the Matter, as the same appears by the Pleadings, or is found by the Jury; but the Jurors are not Judges thereof. Again, there is a twofold Necessity, *Necessitas simplex, vel absoluta*; and *Necessitas qualificata, vel convenientiæ*. Of a simple and absolute Necessity in the Case of Apparel or Food for a Feme Covert, the Law of the Land takes Notice, and provides a Remedy for the Wife, if the Husband refuse or neglect to do it. But if it be only *Necessitas convenientiæ*, whether this or that Apparel, this or that Meat or Drink be most convenient for any Wife, the Law makes no Person Judge thereof, but the Husband himself; and in these Cases, no Man is to put his Hand between the Bone and the Flesh.

I shall conclude the general Question, or first Point, with the Judgment of Sir Thomas Smith, in his Book of the Common-wealth of England, lib. 1. c. 11. fol. 23. *The Natural-*

•      *best Conjunction of two towards the making a further Society of Continuance, is of Husband and Wife, each having Care of the Family, the Man to get, to travel abroad, to defend; the Wife to save, to stay at home and distribute that which is gotten for the Nurture of the Children and Family, is the first and most natural Apparence of one of the best Kind of Commonwealths, where not one always, but sometimes, and in some Things, another bears Rule; which to maintain, GOD hath given the Man greater Wit, Strength and Courage to compel the Woman to obey, by Reason or Force; and to the Woman Beauty, fair Countenance and sweet Words, to make the Man obey her again for Love. Thus each obeyeth and commandeth the other; and they two together Rule the House, so long as they remain together in One. I wish that the Women of this Age would learn thus to obey, and thus to command their Husbands; then would they want for nothing that is fitting.*

I am now come to this particular Case, as it stands before us on the Record. Admit that the Husband were chargeable by Law, by the Contract of his Wife, yet Judgment ought to be given against the Plaintiff, upon this Declaration, as this Verdict is found. For first, the Declaration is, That the Defendant was indebted to the Plaintiff in 40*l.* for Wares and Merchandises, by the Plaintiff to him before that Time sold and delivered; and the Verdict finds that the Wares were not sold and delivered to the Defendant, but the same were sold to his Wife, without his Privity or Consent. So it appears, that the Plaintiff hath mistaken his Action upon the  
 Case

Case, for Wares sold unto him; and ought to have declared Specially, according to the Truth of the Case, for Wares sold to his Wife for necessary Apparel. The Action brought by the Plaintiff is false, and this Verdict is against his Case.

Then the Jury find, that the Defendant's Wife departed from him against his Will, and and lived from him; and that the Defendant, before the Wares were sold to his Wife, did forbid the Plaintiff to trust her with any Wares; and that the Plaintiff, contrary to his Prohibition, did sell and deliver those Wares to the Wife upon Credit; and I conceive, that this Prohibition doth so far bind and bar the Plaintiff, that he shall never have any Action against the Defendant for Wares sold and delivered to his Wife, after he was prohibited by the Husband. It is agreed by all, that a Feme Covert cannot generally make any Contract, which shall charge or discharge her Husband, but by the Authority or Consent of the Husband, precedent or subsequent. And when the Husband forbids a particular Person to trust his Wife, this Prohibition is an absolute Revocation or Countermand, as to that Person, of the general Authority which the Wife had before, and puts him in the same Condition, as if the Wife had never any Authority given her.

It is said by my Brothers *Twisden* and *Tyrrel*, That the Prohibition of the Husband is void; for (says *Tyrrel*) the Husband is bound to maintain his Wife, notwithstanding her Departure from him; and therefore he cannot prohibit others to do it. And



*Twifden* fays, it is a Right vefted in the Wife by the Law ; therefore the Prohibition of the Husband fhall not devest or take it away from her. I have already answered thefe Reafons, on which they ground their Opinions, and will not repeat them. But admit that the Husband be by Law bound to maintain his Wife, notwithstanding her Departure from him againft his Will ; and that the Law doth give or veft a Right in the Wife to bind or charge the Husband by her Contract, for neceffary Apparel ; will this be a good Confequence thereupon ; therefore the Husband cannot forbid this or that particular Perfon to truft his Wife ?

A Man makes a Deed of Feoffment in Fee, upon Condition that the Feoffee fhall not alien, this Condition is void. *Lit. Sect.* 360. But would it not be a ftrange Conclufion to fay thereupon, If a Man makes a Feoffment in Fee, upon Condition that the Feoffee fhall not alien to *ſ. S.* that this Condition is likewise void ? The Reafon given by *Littleton*, why the Condition is void in the former, and not in the latter Deed, is applicable to this Cafe, namely, the Condition in the firft Cafe oufts the Feoffee of all the Power which the Law gives unto him, which fhould be againft Reafon, wherefore the fame is void ; but in the latter Cafe, the Condition doth not take away all the Power of aliening from the Feoffee ; and therefore it is good. So in our Cafe, if the Prohibition were fo general, that the Wife were thereby disabled altogether to cloath herfelf, perhaps it might be reasonable to fay, that the Prohibition was  
void ;

void ; but it being a Restriction only to one particular Person, there is no Colour to say that it is not good.

It is true, as my Brother *Tyrrel* says, that I cannot discharge others to deal with my Wife, although I may forbid my Wife to deal with them ; but it follows not thereon, but that my Prohibition to a particular Man doth make his dealing with, or trusting my Wife, to be at his own Peril ; so that he shall not charge me thereby in any Action ; as in Case of a Servant, who buys Provision for my Household by my Allowance. If I forbid a Butcher, or other Victualler, to sell to my Servant without ready Money, and he delivers Meat to my Servant afterwards upon Trust, 'tis at his Peril ; he shall have no Action against me for it.

It appears not by this Declaration or Verdict, That the Defendant's Wife did want Apparel ; that she ever desired her Husband to supply her therewith ; that he refused to allow her what was fit ; that the Wares sold her by the Plaintiff were for necessary Apparel, or of what Nature or Price the Wares were ; so that the Court may judge of the Necessity or Fitness thereof : But only that the Plaintiff did sell and deliver, upon Credit, divers Wares unto the Wife, for 40*l.* that this was a reasonable Price for these Wares, and the same were necessary for her, and suitable to the Degree of her Husband ; and for these Reasons the Defendant ought to have Judgment in this particular Case against the Plaintiff, be the Law in general what it will.

I will conclude all, as the seven Princes of Persia (who knew Law and Judgments) did in the Case of Queen Vastbi, Esther cap. i. ver. 16. &c. *This Deed that this Woman hath done, in departing from her Husband against his Will, and taking of Clothes upon Trust, contrary to his Prohibition, shall come abroad to all Women; and if it shall be reported that her Husband (by the Opinion of the Judges) must pay for the Wares which she took up, whilst she lived from him, then shall their Husbands be despised in their Eyes: But when it shall be known throughout the Realm, That the Law doth not charge the Husband, in this Case, all the Wives shall give to their Husbands Honour, both great and small.*

This is the full Substance of the learned and very remarkable Argument of Judge Hide, in this Case. And according to his Opinion, Judgment was given in the Exchequer Chamber, for the Defendant; Tyrrell, Twisden and Mallet dissenting. See 1 Sid. 109, 110. and 1 Mod. Rep. 124, 125, &c.

And See also 1 Vent. 24, 42. 2 Vent. 155. 1 Lev. 4, 5, 6. 1 Keb. 69, 80, 87, 206. Aleyn 61. March 60, 82. Latch 126. Stile 18. Telv. 166. Palm. 343. Cro. Car. 254, 355, 494. Cro. Jac. 661. 1 Leon. 312. 1 Roll. Abr. 6. Pl. 6. Noy 79, 126. 1 Salk. 113, 116, 119. 2 Show 283. 6 Mod. 171, 239. Skinn. 323.

## PRECEDENTS of Deeds and Conveyances, concerning Feme Coverts, and other Women.

*A Deed of Partition of Lands made by Coparceners.*

**T**HIS Indenture, Tripartite, made the—  
Day of—, in the Year, &c. *Between*  
*E. B. of, &c. of the first Part, M. B. of,*  
*&c. of the second Part, and S. B. of, &c. of*  
*the third Part. Whereas W. B. late of, &c.*  
*Father of the said E. B. M. B. and S. B. be-*  
*ing seised in his Demesne as of Fee, of and*  
*in one Messuage or Tenement, situate, &c.*  
*and of and in one other Messuage or Tene-*  
*ment and certain Lands, situate, lying and*  
*being in, &c. is dead, without any Heir Male*  
*of his Body, lawfully begotten, and not ma-*  
*king any Disposition of the said Premisses,*  
*whereby all and singular the said Messuages*  
*and Lands, with the Appurtenances, are de-*  
*scended and come unto the said E. B. M. B.*  
*and S. B. Now this Indenture witnesseth, that*  
*the said E. B. M. B. and S. B. have agreed*  
*to make Partition; and by these Presents do*  
*make a full, perfect and absolute Partition of*  
*the said Messuages or Tenements, and Lands*  
*to and amongst them the said E. B. M. B.*  
*and S. B. in three Parts, in Manner follow-*  
*ing (that is to say) That she the said E. B.*  
*her Heirs and Assigns, shall have, hold and*  
*enjoy*



enjoy, To the only proper Use and Behoof of the said *E. B.* her Heirs and Assigns for ever, *All* that Messuage or Tenement, &c. for the full Part, Share and Proportion of her the said *E. B.* of and in all and every the Messuages, Tenements, Lands and Premisses above-mentioned, descended to them the said *E. B. M. B.* and *S. B.* as aforesaid; and that the said *M. B.* her Heirs and Assigns, shall have, hold and enjoy, to the only proper Use and Behoof of the said *M. B.* her Heirs and Assigns for ever, *All* that other Messuage or Tenement, &c. for the full Part, Share and Proportion of her the said *M. B.* of and in all and every the Messuages, &c. And that the said *S. B.* her Heirs and Assigns, shall have, hold and enjoy, to the only proper Use and Behoof of the said *S. B.* her Heirs and Assigns for ever, *All* those Lands, &c. above-mentioned, for the full Part, Share and Proportion of her the said *S. B.* of, and in, &c. And the said *M. B.* and *S. B.* do by these Presents grant, assign, release and confirm to the said *E. B.* and her Heirs, the said Messuage or Tenement, &c. above-mentioned; and all the Estate, Right, Title and Interest, which they the said *M. B.* and *S. B.* or either of them, have or hath, or may or ought to have, of, in and to said Messuage, &c. *To have and to hold* the said Messuage and Premisses, with the Appurtenances, to the said *E. B.* her Heirs and Assigns, to the only Use and Behoof of the said *E. B.* her Heirs and Assigns in Severalty for ever. And the said *E. B.* and *S. B.* do by these Presents, grant, assign, release and confirm to the said

*M. B.*

*M. B.* and her Heirs, the said other Messuage or Tenement, &c. and all the Estate, Right, Title and Interest, &c. *To have and to hold* the said other Messuage or Tenement and Premises, to the said *M. B.* her Heirs and Assigns, to the only Use and Behoof of the said *M. B.* her Heirs and Assigns, in Severalty for ever. *And* the said *E. B.* and *M. B.* do by these Presents, grant, assign, release and confirm to the said *S. B.* and her Heirs, the said Lands and Premises in, &c. and all the Estate, Right, &c. *To have and to hold* the said Lands and Premises, with the Appurtenances, to the said *S. B.* her Heirs and Assigns, to the only Use and Behoof of the said *S. B.* her Heirs and Assigns in Severalty for ever. *And* the said *M. B.* and *S. B.* for themselves severally and apart, and not jointly, and for their several Heirs, Executors, Administrators and Assigns, do severally and apart, and not jointly covenant and grant, to and with the said *E. B.* her Heirs and Assigns, that she the said *E. B.* her Heirs and Assigns, shall and may from henceforth for ever hereafter, peaceably and quietly have, hold, occupy, possess and enjoy the said Messuage or Tenement, &c. before allotted and granted for the Part of the said *E. B.* free and discharged of and from all other Estates, Rights, Titles, Interests, Charges and Incumbrances whatsoever, had, made, or suffered, or hereafter to be had, made or suffered, of or by the said *M. B.* and *S. B.* or either of them, their or either of their Heirs or Assigns; and that without any Let, Hindrance, Interruption or Denial of them the said *M. B.*  
and

and *S. B.* or either of them, their or either of their Heirs or Assigns, or of any other Person or Persons lawfully claiming by, from or under them or any of them. *And* the said *E. B.* and *S. B.* severally and apart, and not jointly, and for their several Heirs, Executors, &c. do severally and apart, and not jointly covenant and grant, to and with the said *M. B.* her Heirs and Assigns, that she the said *M. B.* her Heirs and Assigns, shall and may from henceforth for ever hereafter, peaceably and quietly have, hold, occupy, possess and enjoy the said other Messuage or Tenement, &c. before allotted and granted for the Part of the said *M. B.* free and discharged of and from, &c. and that without any Let, Hindrance, or Interruption, &c. *And* the said *E. B.* and *M. B.* severally and apart, and not jointly, &c. do covenant and grant to and with the said *S. B.* &c. that she the said *S. B.* her Heirs and Assigns, shall and may from henceforth for ever hereafter, peaceably and quietly have, hold, &c. the said Lands and Premises before allotted and granted for the Part of the said *S. B.* free and discharged from, &c. *ut supra.* [Here might be added a Covenant for further Assurance to each other.] *In witness, &c.*

*A Partition*

*A Partition of Lands among Parceners,  
by Way of casting Lots.*

**T**HIS Indenture, Tripartite, made, &c.  
*Between A. M. of, &c. of the first Part,  
T. S. of, &c. Esq; and J. his Wife, of the  
second Part, and L. G. of, &c. Widow, of the  
third Part. Whereas by one Indenture, bear-  
ing Date, &c. made or mentioned to be  
made between W. M. and, &c. he the said  
W. M. covenanted and agreed to levy a Fine  
of All those his Manors and Farms, and Lands  
called, &c. (by Way of Settlement) to the  
Use of, &c. and a Fine in, &c. Term, was  
levied accordingly. And whereas the said  
W. M. is since dead, without any Heir Male  
of his Body lawfully begotten, whereby the  
said Manors, Farms, Lands, Hereditaments  
and Premisses, are descended and come to  
the said A. M. J. S. and L. G. Now this  
Indenture witnesseth, That for a Partition of all  
and singular the said Manors, Farms, Messua-  
ges, Lands, Tenements, Hereditaments and  
Premisses before-mentioned, to be made be-  
tween the said Parties to these Presents, that  
every of them may hold and enjoy their  
Part in Severalty to them, their Heirs and  
Assigns: It is hereby covenanted, granted, con-  
cluded and agreed, by and between all the  
said Parties to these Presents, for them and  
their Heirs, in Manner and Form following;  
(that is to say) That all the said Manors,  
Farms and Lands, &c. shall be, and are here-  
by divided and set forth into three Parts, Di-  
visions*



visions or Allotments; and that for the first of the said three Parts, Divisions or Allotments, there shall be, and is hereby set forth and allotted the said Manor of, &c. with the Rights, Members and Appurtenances, and also, &c. and that for the second of the said three Parts, Divisions or Allotments, shall be and is hereby set forth and allotted, All that the said Manor of, &c. situate, lying in, &c. and that for the third of the said three Parts, Divisions or Allotments, there shall be and is hereby set forth and allotted, All those the Farms of, &c. with the Lands thereto belonging, and every Part thereof, with their Appurtenances; being all the Manors, Farms, Messuages, Lands, Hereditaments and Premises, in the said recited Indenture and Fine comprised or settled as aforesaid. *And it is hereby further* covenanted, granted, concluded and agreed, by and between all the said Parties to these Presents, for them, their Heirs and Assigns, That all the said Premises being so hereby set forth and divided into the said three Parts, Divisions or Allotments, as aforesaid; it shall be determined by Way of Lot, to which of them the said Parties each several Part, Division or Allotment shall belong, in Manner following; (*viz.*) In one small Scroll of Parchment, shall be written these Words, *Manor of, &c.* or, *The first Division*, which Scroll shall be inclosed in Wax, to be made up round, in the Form of a Ball, and the said Ball shall stand for and be the Lot for the first Part, Division or Allotment of the Manors and Lands, set out as aforesaid. In one other like Scroll of Parchment shall be

be written these Words, *Manors of*, &c. or the second Division, which Scroll shall be enclosed in Wax, made up round in Form of a Ball, &c. and in one other like Scroll of Parchment shall be written these Words, *Farms of*, &c. or, *The third Division*, &c. And all the said three Scrolls of Parchment, or Balls, shall be put together in a Bag; and first, the said *A. M.* shall put her Hand into the said Bag, and take out one of the said Balls; and afterwards the said *T. S.* for himself and the said *J.* his Wife, shall put his Hand into the said Bag, and take out another of the said Balls; and afterwards the said *L. G.* shall put her Hand into the said Bag, and take out another of the said Balls; and that Lot which shall be taken by the said *A. M.* shall stand and be for the Part and Share of the said *A. M.* her Heirs and Assigns, of all the said Manors and Lands, &c. And that Lot which shall be taken by the said *T. S.* shall stand and be for the Part and Share of the said *J.* his Wife, her Heirs and Assigns, of all the said Manors, &c. And that Lot which shall be taken by the said *L. G.* shall stand and be for the Part and Share of the said *L. G.* &c. And that every of them the said *A. M.* *T. S.* and *J.* his Wife, and *L. G.* and their several Heirs and Assigns, and all other Persons claiming by, from or under them, or any of them, or by any Grants or Conveyances made by them, or any of them, shall and will for ever abide and stand to such Determination by Way of Lot, as afore said; and that after such Determination made by Lot, Assurances and Conveyances shall be made of the said several Parts and Divisions accordingly, (that is to say

say) such of the said Parties to these Presents, and his, her and their Heirs and Assigns, to whom the said Manor of, &c. hereby allotted and set forth for the said first Division or Allotment, that shall fall or happen by Way of Lot, as aforesaid, shall and will from Time to Time, and at all Times, within the Space of seven Years next ensuing the Date hereof, at and upon the reasonable Request, and at the Costs and Charges in the Law of the said other Parties to these Presents, their Heirs and Assigns respectively, make and execute such Assurances and Conveyances for the assuring, releasing and conveying of all the rest of the said Manors of, &c. set forth and allotted for the said second Division, and for the said third Division respectively; and of all his, her and their Estate, Interest, Claim and Demand in or to the same, unto such of the said Parties, and their Heirs and Assigns, to whom they shall respectively happen or fall, by such Lot as aforesaid, as by the said Parties and their Heirs, shall be reasonably devised and required. And such of the said Parties to these Presents, and their Heirs and Assigns to whom the said Manors of, &c. hereby allotted and set forth for the said second Division or Allotment, shall fall or happen by Way of Lot as aforesaid, shall and will from Time to Time, and at all Times, within the Space of, &c. next ensuing the Date hereof, at and upon the reasonable Request, &c. make and execute such Assurances, &c. for assuring and conveying the rest of the said Manors, &c. set forth and allotted for the first Division, and for the said third Division respectively; and all his, her and their Estate, &c. *ut supra.*  
 And

And the like for the Party to whom the third Division shall happen, to assure to those that have the First and Second. *In witness, &c.*

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A common *Marriage-Settlement*, or *Jointure* of Lands.

**T**HIS Indenture Tripartite, made, &c. Between T. D. of, &c. Esq; of the first Part, M. E. of, &c. F. T. and H. W. of, &c. of the second Part, and A. E. Daughter of the said M. E. of the third Part, *witnesseth*, That the said T. D. for and in Consideration of a Marriage intended (by GOD's Permission) shortly to be had and solemnised, between the said T. D. and the said A. E. and of the Sum of 4000*l.* to be had and received by the said T. D. as a Marriage Portion with the said A. and that a competent Jointure may be had, made and provided for the said A. E. (in Case the said Marriage shall take effect) and for the settling and assuring of the Messuages, Lands, Tenements and Hereditaments, herein after mentioned, to and upon the several Uses, Intents and Purposes herein after limited and declared, pursuant to the Agreement made upon the Contract of the said intended Marriage; he the said T. D. hath granted, bargained and sold, aliened, released and confirmed; and by these Presents doth grant, &c. unto the said M. E. F. T. and H. W. (in their actual Possession, now being, by Virtue of a Bargain and Sale to them thereof made for one whole Year, by Indenture, bearing Date the Day next before the Day of the Date of these Presents,

P

and



and by Force of the Statute for transferring of Uses into Possession) and to their Heirs and Assigns for ever, *All* that Capital Messuage, commonly called or known by the Name of, &c. And all those Messuages, or Tenements and Lands, &c. and all other the Messuages, Lands, Tenements and Hereditaments of the said *T. D.* situate, &c. in the County of, &c. and all Houses, Buildings, Gardens, Orchards, Lands, Meadows, Pastures, Feedings, Trees, Woods, Underwoods, Ways, Paths, Waters, Water-courses, Easements, Profits, Commodities, Advantages, Emoluments and Hereditaments whatsoever, to the said Messuages or Tenements belonging, or in any wise appertaining, or which now are or formerly have been accepted, reputed, taken, known, used, occupied or enjoyed, to or with the same, or as Part, Parcel or Member thereof, or of any Part thereof; and also the Reversion and Reversions, Remainder and Remainders, Rents and Services of all and singular the said Premises above-mentioned, and of every Part and Parcel thereof, with the Appurtenances; and all the Estate, Right, Title, Interest, Claim and Demand whatsoever, as well in Equity as in Law, of him the said *T. D.* of, in and to all and singular the same Premises, and of, in and to every Part and Parcel thereof, with the Appurtenances: *To have and to hold* all and singular the said Messuages, Lands, Tenements and Hereditaments above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said *M. E. F. T.* and *H. W.* their Heirs and Assigns, to and for the several Uses, Intents, Trusts and Purpo-

Purposes herein after mentioned, limited, express'd and declar'd, (that is to say) to the Use and Behoof of the said *T. D.* and his Heirs, until the said Marriage between him and the said *A. E.* his intended Wife, shall be had and solemnised; and from and after the Solemnization thereof, to the Use and Behoof of the said *T. D.* and his Assigns, for and during the Term of his natural Life, without Impeachment of Waste; and from and after the Determination of that Estate, by Forfeiture or otherwise, to the Use and Behoof of the said *M. E. F. T.* and *H. W.* and their Heirs, for and during the natural Life of the said *T. D.* in Trust, to preserve and support the contingent Remainders herein after limited, from being defeated and destroyed, and for that Purpose to make Entries, and bring Actions, as the Case shall require; yet nevertheless in Trust, to permit and suffer the said *T. D.* and his Assigns, to receive and take the Rents, Issues and Profits thereof, to his and their own proper Use and Benefit, during his natural Life; and from and after the Decease of the said *T. D.* to the Use and Behoof of the said *A. E.* (intended Wife of the said *T. D.*) and her Assigns, for and during the Term of her natural Life, for her Jointure, and in full Satisfaction and Bar of her Dower or Thirds, which she may claim to have in any Lands, Tenements or Hereditaments, whereof or wherein he the said *T. D.* shall at any Time, during his Life, be seised of any Estate of Inheritance; and from and after the Decease of the Survivor of them the said *T. D.* and *A.* his intended Wife, to the Use and Behoof of the Heirs

Males of the Body of the said *T. D.* on the Body of the said *A. E.* lawfully to be begotten ; and for Default of such Issue, to the Use and Behoof of the said *M. E. F. T.* and *H. W.* their Executors, Administrators and Assigns, for and during the Term of five hundred Years, thence next following, and fully to be compleated and ended, upon the Trusts, and subject to such Conditions as are herein after declared, of and concerning the same Term ; and from and after the Expiration, or other sooner Determination of that Term, to the Use and Behoof of the said *T. D.* his Heirs and Assigns for ever. *Provided* always, and it is hereby declared and agreed, by and between the said Parties to these Presents, that the said Term of five hundred Years, so limited to them the said *M. E. F. T.* and *H. W.* their Executors, Administrators and Assigns, as aforesaid, is upon this Condition, that if the said *T. D.* shall happen to die without Issue Male, by him begotten, on the Body of the said *A.* or shall leave Issue Male, and such Issue Male shall die before he shall attain the Age of Twenty-one Years, without Issue Male ; and that in either of the said Cases, there shall happen to be one or more Daughter or Daughters of their Bodies begotten, that then, and in such Case, if the Heirs or Assigns of the said *T. D.* do and shall well and truly pay, or cause to be paid, to such Daughter or Daughters respectively, at her and their respective Ages of Twenty-one Years or Days of Marriage, the several Portions following (that is to say) if it shall happen there shall be but one such Daughter,

Daughter, then the Sum of 4000*l.* for the Portion of such Daughter, to be paid to her at the said Age of Twenty-one Years, or Day of Marriage, which shall first happen, with Interest in the mean Time, after the Rate of 5*l. per Cent. per Annum* ; and if it shall happen that there shall be two or more such Daughters, then the Sum of 6000*l.* for the Portions of such two or more Daughters, to be equally divided among them, Share and Share alike ; and to be paid to them respectively at their said respective Ages of Twenty-one Years, or Days of Marriage, which shall first happen, with Interest therefore in the mean Time, &c. And if any such Daughter or Daughters shall happen to die unmarried, before her or their Portion or Portions shall become payable as aforesaid, then the Portion or Portions of her or them so dying, shall go and be paid to the Survivors or Survivor of them, equally to be divided amongst them, Share and Share alike, (to be paid at the same Time as the original Portions should or ought to become payable, as aforesaid, in Case they had been living) so as no one such Daughter shall have for her Portion, by Survivorship, or otherwise, by Virtue of the said Term of five hundred Years, above the Sum of 400*l.* And in Case there shall be no such Daughter, who shall live to be married, or attain the Age of Twenty-one Years, that then, and in either of the said Cases so happening, the said Term shall cease, determine and be void, any thing herein contained to the contrary, notwithstanding. *Provided also*, and upon this further



ther Condition, That in Case the said *T. D.* shall happen to die without such Issue Male, as aforesaid, and shall happen to leave one or more Daughter or Daughters, and such Daughter or Daughters, or either of them, shall happen to marry in the Life-time of the said *T. D.* and *A.* his intended Wife, or either of them, or in the Life-time of the said Trustees, or any or either of them, without the Consent of such of them the said *T. D.* and *A.* and of the said Trustees, or the greater Number of them, who shall be then living, signed and declared under their Hands; that then the Portion and Portions hereby intended for such Daughter and Daughters so marrying respectively, shall go and be paid to such other Daughter or Daughters, who shall marry with such Consent as aforesaid. And in Case all such Daughters shall happen to marry, without such Consent as aforesaid, that then the said Term of five hundred Years shall cease and be void: *Provided also*, and it is hereby further declared and agreed, that it shall and may be lawful to and for him the said *T. D.* during his Life, and after his Death, for the said *A.* his intended Wife, during her Life, in Case the said intended Marriage shall take Effect, by any Writing or Writings, under his or her Hand and Seal respectively, attested by two or more credible Witnesses, to make any Lease or Leases, Demise or Grant, of all or any Part or Parts of the said Messuages and Lands to any Person or Persons whatsoever, for the Term of twenty-one Years, or for any Term or Number of Years, not exceeding  
twenty-

twenty-one Years ; so as such Leases, Demi-  
 ses or Grants for Years, be made to com-  
 mence and take Effect in Possession within  
 one Year after the Date thereof ; and so as  
 upon all and every such Lease or Leases, De-  
 mises or Grants to be made by the said *T. D.*  
 and *A.* his intended Wife respectively, there  
 be reserved payable yearly, during the Con-  
 tinuance thereof, the best and most improv'd  
 yearly Rents, which at the Time of making  
 thereof, can or may be gotten for the same ;  
 and so that in every such Lease there be con-  
 tained a Clause of Re-entry for Nonpayment  
 of the Rent or Rents thereby reserved ; and  
 so as the Lessee and Lessees to whom such  
 Lease and Leases shall be made, do seal and  
 deliver Counterparts of such Lease and Leases.  
*And* the said *T. D.* for himself, his Heirs and  
 Assigns, doth covenant and grant, to and with  
 the said *M. E. F. T.* and *H. W.* their Heirs  
 and Assigns, that the said Messuages, Lands,  
 Tenements, Hereditaments and Premisses a-  
 bove-mentioned, shall and may from hence-  
 forth, for ever hereafter, be, remain and con-  
 tinue to, for and upon the several Uses, In-  
 tents, Trusts and Purposes, and under and  
 subject to the several Limitations, Proviso's  
 and Agreements before-mentioned and ex-  
 pressed, concerning the same, according to  
 the true Intent and Meaning of these Pre-  
 sents. *And also*, that he the said *T. D.* and  
 his Heirs, and all and every other Person  
 and Persons, and his and their Heirs, any  
 Thing having or claiming in the said Messu-  
 ages, Lands, Tenements and Premisses above-  
 mentioned, or any Part thereof, by, from or

under him, them, or any of them, shall and will, at all Times hereafter, upon the reasonable Request of the said *M. E. F. T.* and *H. W.* their Heirs and Assigns, make, do and execute, or cause or procure to be made, &c. all and every such further and other lawful and reasonable Grants, Acts and Assurances in the Law whatsoever, for the further, better and more perfect granting and assuring of all and singular the said Messuages, Lands, Tenements, Hereditaments and Premises above-mentioned, with the Appurtenances, to and for the several Uses, Intents and Purposes above declared, limited and appointed, and according to the true Intent and Meaning of these Presents, as by the said *M. E. F. T.* and *H. W.* and their Heirs, or their or any of their Counsel, learned in the Law, shall be reasonably devised or advised and required. *And further*, it is covenanted, granted, concluded and agreed upon, by and between the said Parties to these Presents, and the true Meaning hereof also is, and it is hereby so declared, that all and every Fine and Fines, and also all and every Recovery and Recoveries, Assurance and Assurances, Conveyance and Conveyances in the Law whatsoever already had, made, levied, suffered, executed or acknowledged, or at any Time hereafter to be had, made, &c. of the said Messuages, Tenements, Lands and Premises above-mentioned, or any Part thereof, either alone, or jointly with any other Lands, Tenements or Hereditaments, by or between the said Parties to these Presents, or by or between them or any of them, and any other  
 Person

Person or Persons, as for and concerning all and singular the said Messuages, Lands, Tenements, Hereditaments and Premises above-mentioned, and every Part thereof, with the Appurtenances, *shall be* and enure, and shall be adjudged, esteemed and taken to be and enure, to and for the several Uses, Intents and Purposes above-mentioned, limited, expressed and declared, according to the true Intent and Meaning of these Presents, and to and for none other Use, Intent or Purpose whatsoever. *In witness, &c.*

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*A Settlement by Fine and Recovery, of Manors and Lands, on the Husband for Life, Remainder to the Wife for her Jointure, &c. and Terms upon Trust, for the separate Use of the Wife, to raise Money to buy her Cloaths, &c. and for raising Portions for younger Children.*

**T**HIS Indenture, Quinquepartite, made, &c. Between B. A. of, &c. Esq; and E. his Wife, of the first Part, W. A. eldest Son and Heir Apparent of the said B. A. on the said E. begotten, and D. Wife of the said W. A. (who is eldest Daughter of D. E. of, &c. and one of the Sisters and Coheirs of, &c.) of the second Part, D. C. of, &c. and F. E. of, &c. of the third Part, the said D. E. H. D. of, &c. and K. J. of, &c. of the



the fourth Part, and *M. L.* of, &c. *R. O.* of, &c. and *P. N.* of, &c. of the fifth Part; *Witnesseth*, that for and in Consideration of a Marriage already had and solemnized between the said *W. A.* and *D.* his Wife, and in Pursuance and Part of Performance of certain Articles of Agreement, made on the Contract of the said Marriage, bearing Date, &c. and made or mentioned to be made between, &c. And in Consideration also of the Sum of 12000*l.* of, &c. to the said *W. A.* in Hand paid by the said *D. E.* as and for the Marriage Portion of the said *D.* his Wife, and in full of her Share and Proportion of the Estate of, &c. deceased, the Receipt whereof he the said *W. A.* doth hereby confess and acknowledge; and for the settling and assuring of the Manors, Lands, Tenements and Hereditaments herein after mentioned, to and upon the several Uses, Intents, Trusts and Purposes herein after limited, expressed and declared, pursuant to the said Marriage-Articles above-mentioned; they the said *B. A.* and *W. A.* do, and either of them doth, for themselves, their Heirs and Assigns, covenant, grant and agree, to and with the said *D. C.* and *F. E.* their Heirs and Assigns, and the said *E.* Wife of the said *B. A.* doth hereby consent and agree, that they the said *B. A.* and *E.* his Wife, and *W. A.* shall and will on this Side, and before the End of *Michaelmas* Term next coming, in due Form of Law, acknowledge and levy, before his Majesty's Justices of the Court of Common Pleas at *Westminster*, unto the said *D. C.* and *F. E.* and their Heirs, or to the

Heirs

Heirs of one of them, one Fine *sur Conu-  
jance de Droit come ceo*, &c. of *All* that the  
Manor of, &c. and of all those Manors and  
Lands, &c. And of the Reversion and Re-  
versions, Remainder and Remainders, &c.  
of all and singular the said Manors and Pre-  
misses, and every Part and Parcel thereof,  
with the Appurtenances, by such Name and  
Names, &c. and in such Manner and Form  
as by the Counsel of the said *D. C.* and *E.*  
shall be advised and thought fit. *Which* said  
Fine so to be had and levied in Manner afore-  
said, or in any other Manner to be had and  
levied of the said Manors and Premisses a-  
bove-mentioned, with the Appurtenances,  
shall be and enure, and shall be adjudged,  
esteemed and taken to be and enure, to and  
for the only proper Use and Behoof of the  
said *D. C.* and *F. E.* their Heirs and Assigns,  
whereby to make them Tenants of the Free-  
hold of the said Premisses; *Yet nevertheless* to  
this further End, Intent and Purpose, That  
the said *D. C.* and *F. E.* shall and will, on  
this Side, and before the End of the said next,  
&c. Term, permit and suffer the said *H. D.*  
and *K. J.* in due Form of Law, to sue forth  
and prosecute, one Writ of Entry *sur Dis-  
seisin in le post*, returnable before his said Ma-  
jesty's Justices of the said Court of Common  
Pleas, against the said *D. C.* and *F. E.* of all  
and singular the said Manors, &c. by such  
Name and Names, Quantity and Number of  
Messuages, &c. as by the said *H. D.* and *K. J.*  
or their Counsel learned in the Law shall  
be reasonably devised, or advised and requi-  
red, *Unto* and upon which said Writ of En-  
try,

try, so to be brought, the said *D.C.* and *F.E.* shall appear and vouch to Warranty, the said *W.A.* and the said *W.A.* shall appear *gratis*, and enter into the said Warranty, and after his Entry into the said Warranty, shall vouch over the common Vouchee, who shall likewise appear and enter into the said Warranty and Imparl, and afterwards make Default, to the End one perfect Common Recovery, with double Voucher, shall and may thereof be had, prosecuted and suffered in all Things, according to the usual Order and Form of Common Recoveries, for Assurance of Lands, Tenements and Hereditaments, in such Cases used and accustomed; and the same Recovery shall also be executed in due Form of Law, by one Writ *Habere facias seisinam* accordingly. And it is covenanted, granted, concluded and agreed upon, by and between the said Parties to these Presents, that the said Recovery, so or in any other Manner and Form, to be had and suffered; and also all and every other Recovery or Recoveries to be hereafter executed, had or suffered of the said Manors and Premises, or any Part thereof, by or between the said Parties to these Presents, or by or between them, or any of them, and any other Person or Persons on this Side, and before the End of, &c. Term next coming, and the full Force of them, and every of them, and all other Assurance and Assurances of the said Premises, or any Part thereof, had, or to be had, or made between the said Parties, or any of them, shall be and enure, and shall be adjudged, esteemed and taken, and are meant  
and

and intended to be and enure, to, for, and upon the several Uses, Intents, Trusts and Purposes, and subject to the several Proviso's and Agreements hereafter particularly mentioned, limited, expressed and declared, (that is to say) *As for and concerning* all that the Manor and Capital Messuage of, &c. and the Reversion and Reversions, Remainder and Remainders, Rents and Services thereof, to the Use and Behoof of the said *W. A.* and his Assigns, for and during the Term of his natural Life, without Impeachment of or for any Manner of Waste, and with Liberty to commit Waste; and from and after the Determination of that Estate, by Forfeiture or otherwise, then to the Use and Behoof of the said *D. E. H. D.* and *K. J.* their Heirs and Assigns, for and during the natural Life of the said *W. A.* to preserve and support the contingent Remainders herein after limited, from being defeated or destroyed; and for that Purpose to make Entries, and bring Actions, as the Case shall require; but nevertheless in Trust to permit and suffer the said *W. A.* and his Assigns, for and during his natural Life, to receive and take the Rents, Issues and Profits of the said Manor and Premises, to and for his and their own proper Use and Benefit; and from and after the Decease of the said *W. A.* then to the Use and Behoof of the said *D.* Wife of the said *W. A.* and her Assigns, for and during the Term of her natural Life, in full of her Jointure, and in Satisfaction and Bar of her Dower at the Common Law; and from and after the several Deceases of them



them the said *W. A.* and *D.* his Wife, then to the Use and Behoof of the first Son of the Body of the said *W. A.* on the Body of the said *D.* his Wife lawfully begotten, or to be begotten, and the Heirs Males of the Body of such first Son, lawfully issuing; and for Default of such Issue, then to the Use and Behoof of the second Son of the Body of the said *W. A.* on the Body of the said *D.* his Wife, lawfully begotten, or to be begotten, and the Heirs Males of the Body of such second Son, lawfully issuing; and for Default of such Issue, then to the Use and Behoof of the third Son of the Body of the said *W. A.* on the Body of the said *D.* his Wife, lawfully begotten, or to be begotten, and the Heirs Males of the Body of such third Son, lawfully issuing; and for Default of such Issue, then to the Use and Behoof of the fourth Son of the Body of the said *W. A.* on the Body of the said *D.* his Wife, to be begotten, and of the Heirs Males of the Body of such fourth Son, lawfully issuing; and for Default of such Issue, then to the Use and Behoof of the fifth, sixth, seventh, eighth, ninth and tenth Son and Sons, and of all and every other Son and Sons of the Body of the said *W. A.* on the Body of the said *D.* his Wife lawfully to be begotten, severally and successively, and in Remainder one after another, as they and every of them shall be in Seniority of Age and Priority of Birth, and of the Heirs Males of the Body and Bodies of all and every such Son and Sons lawfully issuing; the Elder of such Son and Sons, and the Heirs Male of his Body lawfully issuing,  
always

always to be preferred and take before the younger of such Son and Sons, and the Heirs Male of his and their Body or Bodies lawfully issuing; and for Default of such Issue, and in Case the said *D.* at the Death of the said *W. A.* shall be *Enfient* and with Child, then to the Use of the said *D.* and her Assigns, until the said *D.* shall be delivered of such Child; and if such Child shall be a Son, then to the Use and Behoof of such afterborn Son, and the Heirs Males of his Body lawfully issuing; and for Default of such Issue, then to the Use and Behoof of the Heirs Males of the Body of the said *W. A.* lawfully to be begotten; and for Default of such Issue, then to the Use and Behoof of, &c. second Son of the said *B. A.* and the Heirs Males of his Body lawfully to be begotten; and for Default of such Issue, then to the Use and Behoof of the third, fourth, fifth, sixth, seventh, eighth, ninth and tenth Son and Sons, &c. of the Body of the said *B. A.* on the Body of the said *E.* begotten, &c. and for Default of such Issue, then to the Use and Behoof of all and every the Daughter and Daughters of the said *B. A.* on the Body of the said *E.* begotten, and to be begotten, and the Heirs of the Body and Bodies of such Daughter and Daughters lawfully to be begotten; and for Default of such Issue, then to the Use and Behoof of the said *B. A.* his Heirs and Assigns for ever, and to and for none other Use, Intent or Purpose whatsoever. *And as for and concerning* all that the Manor of, &c. to the Use and Behoof of the said *M. L. R. O.* and *P. N.* their Executors, Administrators

ministrators and Assigns, for and during the Term of 99 Years next ensuing and fully to be compleat and ended, if the said *D.* Wife of the said *W. A.* shall so long Live; upon this special Trust and Confidence, that they the said *M. L. R. O.* and *P. N.* their Executors, Administrators and Assigns, shall from Time to Time during the joint Lives of the said *W. A.* and *D.* receive and take the Rents, Issues and Profits of the said Manor, Lands and Premisses last abovementioned, and pay and answer the same unto the said *D.* for her sole and particular Maintenance for Cloaths, Apparel, and otherwise as she shall think fit, and the said *W. A.* not to intermeddle with the same; and the Acquittance and Discharge, Acquittances and Discharges of the said *D.* from Time to Time under her Hand, shall be judg'd, deemed and taken to be good and sufficient Discharges unto the said *M. L. R. O.* and *P. N.* their Executors and Administrators for the same, and every Part thereof, against the said *W. A.* his Heirs, Executors and Assigns, and against all Accounts to be to him or them given, rendred or yielded therefore: And as for and concerning the said Manor and Premisses limited for the said Term of 99 Years, immediately after the Determination of that Term; and as for and concerning all and singular other the said Manors, Messuages, Lands, &c. whereof no Use or Estate is herein before limited, to the Use and Behoof of the said *B. A.* and *E.* &c. *Provided always*, and it is further covenanted and agreed, by and between the said Parties to these Presents, and hereby so declared, that  
in

in Case the said *D.* Wife of the said *W. A.* shall happen to die in the Life-Time of the said *W. A.* without Issue Male of her Body by the said *W. A.* begotten, or having Issue Male, and such Issue shall all happen to die in the Life-Time of the said *W. A.* without Issue Male; that then and in such Case, it shall be lawful for the said *W. A.* with the Consent of the said *B. A.* and *E.* his Wife, if both of them shall be living, otherwise with the Consent of the Survivor of them; and if both of them shall be dead, then for the said *W. A.* without such Consent, and at his Will and Pleasure, by any Writing or Writings by him to be signed and sealed in the Presence of two or more credible Witnesses, to revoke, alter and make void all and every the Use and Uses herein before limited and appointed, subsequent to the Limitation to him for his Life; and by the same Writing or Writings, or by any other Deed or Deeds, Writing or Writings, to create, limit or appoint any other new Use or Uses of the said Premises, or any Part thereof, so as such new Use and Uses so to be created or appointed, be to the Heirs Males of his own Body, or to some Heir Male and his Issue of the Family of the said *B. A.* and not otherwise. *Provided also*, and it is further agreed and declared, by and between the said Parties to these Presents, that in Case the said *W. A.* shall have more than one Son, or a Son or Sons, and one or more Daughter or Daughters by him begotten on the said *D.* his Wife, then it shall and may be lawful to and for the said *W. A.* by any

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Deed



Deed or Deeds, Writing or Writings, or by his last Will and Testament in Writing, to be duly executed, &c. to charge the said Manors and Premisses, or any Part thereof, by creating or limiting a Term of 100 Years or otherwise on the said Premisses abovementioned, and to be defeazible on Payment of the Sum of 10,000 *l.* for the Portion or Portions of such younger Son or Sons, Daughter and Daughters by such Proportions, and in such Sort, Manner and Form, as the said *W. A.* by such Deed or Deeds, Writing or Writings, or by his last Will and Testament in Writing, to be executed, as aforesaid, shall direct, limit and appoint: And further, that in such Case, it shall be lawful for the said *W. A.* at any Time during his Life, by such Writing or Will as aforesaid, to charge the said Premisses, or any Part thereof, with any Annuity or Annuities, to and for such younger Son or Sons, not exceeding in the whole the Sum of 1000 *l. per Annum*, as the said *W. A.* shall by such Deed or Deeds, Writing or Writings, or by his last Will in Writing, to be duly executed as aforesaid, direct, limit or appoint; so as the said Charge, Term of 100 Years, or the said Annuity or Annuities, do not commence or take Effect 'till after the Deceases of the said *B. A.* and *E.* his Wife, any Thing herein contained to the contrary thereof in any wise notwithstanding. *Provided also*, and it is hereby further agreed and declared, that it shall and may be lawful to and for the said *B. A.* during his Life, and the said *E.* after his Death, during her Life; and also for the said *W. A.* during his Life,

Life, and for the said *D.* after his Death, and during her Life, as they shall respectively become Owners, and be in Possession of the Premises by the respective Limitations in these Presents herein before mentioned, by Indenture under their respective Hands and Seals, to Demise and Lease to any Person or Persons whatsoever, all and every, or any of the said Manors and Premises abovementioned to them severally limited in Use, as aforesaid, for any Term or Number of Years not exceeding the Term of 21 Years in Possession, and not in Reversion, Remainder or Expectancy ; so as no such Lease or Leases be made dishonourable of Waste, and so as upon every such Lease, there be reserved the greatest and most improved yearly Rent that can or may be had and obtained for the same, without taking any Money or other Thing, by way of Fine or Consideration for such Lease or Leases, and so as the Person or Persons to whom such Lease or Leases shall be granted, do Seal and Execute Counterparts of the same Leases. *And* the said *B. A.* and *W. A.* for themselves severally and apart, and not jointly, and for their respective Heirs and Assigns, do severally and apart, and not jointly, Covenant and Grant, to and with the said *D. E. H. D.* and *K. I.* their Heirs and Assigns, that all and singular the said Manors, Messuages, Lands, Tenements, Hereditaments and Premises abovementioned, shall and may from Time to Time, and at all Times, for ever hereafter, Remain, continue and be, to, for and upon the several Uses, Intents, Trusts and Purposes herein before mentioned, limited,

ed, expressed and declared, according to the true Intent and Meaning of these Presents, and to and for none other Use, Intent, Trust, or Purpose whatsoever. *And* that free and clear, and freely and clearly acquitted and discharged of and from all former and other Bargains, Sales, Gifts, Grants, Leases, Jointures, Dowers, Uses, Wills, Intails, Fines, &c. And all other Charges, Estates, Rights, Titles, Troubles and Incumbrances, had, made, committed, done or suffered by them the said *B. A.* and *W. A.* or either of them, their or either of their Heirs or Assigns, &c. *And also*, that they the said *B. A.* and *W. A.* and their Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Manors and Premises abovementioned, &c. shall and will upon the reasonable Request of them the said *D. E. H. D.* and *K. J.* their Heirs and Assigns, &c. (Covenant to make further Assurance, as in the preceding Settlement) *And lastly*, it is covenanted, granted, concluded and agreed upon, by and between all the said Parties to these Presents, &c. that all and every Fine and Fines, Recovery and Recoveries, Assurance and Assurances, &c. shall Enure to the Uses, &c. (*ut ante.*) *In Witness,* &c.

A Marriage Settlement *made by the Wife of her own Estate, so as to be entirely at her Disposition after Marriage; except a Part for the Husband, &c.*

**T**HIS Indenture Tripartite, made, &c. Between E. A. of, &c. of the first Part, S. T. of, &c. Esq; of the second Part, B. W. of, &c. H. S. of, &c. and W. E. of, &c. of the third Part. Whereas the said E. A. is and standeth seized in Fee-simple of and in the several Manors, Messuages, Lands, Tenements and Hereditaments herein after mentioned. And whereas, there is a Marriage intended shortly to be had and solemnized between her the said E. A. and the said S. T. upon the Contract of which Marriage it is agreed, that she the said E. A. shall and may have and receive out of her said Estate, during the joint Lives of them the said S. T. and E. A. the yearly Sum of 1500*l.* clear of all Reprizes to her own separate Use, and to be paid in manner herein after express'd; and the Residue of the Rents and Profits of the same, is to be receiv'd, paid, applied and disposed of, upon such Trusts, and for such Ends, Intents and Purposes, as are herein after declared. Now this Indenture witnesseth, That as well in Consideration of the said intended Marriage, as for the Settling and Assuring of the Manors, Lands, Tenements and Hereditaments herein after mentioned, to the several Uses, Intents and Purposes, and Subject to the Powers, Proviso's, and Agreements herein after

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declared,



declared, touching and concerning the same ; and for and in Consideration of the Sum of 10 s. of, &c. in Hand paid to the said *E. A.* by the said *B. W. H. S.* and *W. E.* at and before the Sealing and Delivery of these Presents, the Receipt whereof is hereby acknowledged ; and for divers other good Causes and Considerations her the said *E. A.* hereunto moving ; she the said *E. A.* with the Consent and Approbation of the said *S. T.* testified by his being a Party to and Signing and Sealing of these Presents, *Hath* granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these Presents doth Grant, &c. unto the said *B. W. H. S.* and *W. S.* (in their actual Possession now being, &c.) and to their Heirs, *All* that the Manor of, &c. with the Rights, Members and Appurtenances thereof in the County of, &c. and also all that Messuage or Tenement, &c. and all Lands, &c. and the Reversion and Reversions, Remainder and Remainders, Rents, Issues and Profits of the said Premises ; and all the Estate, Right, Title, Interest, Property, Claim and Demand of her the said *E. A.* in and to the same. *To have and to hold* the said Manors, Lands, Tenements, Hereditaments, and all and singular the Premises hereby granted, or intended to be hereby granted, with their and every of their Rights, Members and Appurtenances, unto the said *B. W. H. S.* and *W. E.* and their Heirs, to the several Uses, Intents and Purposes, and Subject to the Estates, Powers, Proviso's and Limitations herein after in these Presents limited and express'd, (that is to say) to the Use of the said

saïd *E. A.* her Heirs and Assigns until the saïd Marriage between her and the saïd *S. T.* her intended Husband shall be had and solemnized; and from and after the Solemnization thereof, to the Use of the saïd *B. W. H. S.* and *W. E.* their Executors, Administrators and Assigns, for the Term of 99 Years from thence next ensuing, and fully to be compleat and ended, if the saïd *S. T.* and *E. A.* shall jointly so long live, upon the Trusts herein after mentioned, touching and concerning the saïd Term; and after the Determination of that Estate, to the Use and Behoof of the saïd *E. A.* her Heirs and Assigns for ever; with and under such Powers, Privileges, Advantages and Authorities, as are herein after mentioned and exprefs'd, (*viz.*) that it shall and may be lawful to and for the saïd *E. A.* at any Time or Times during her natural Life; jointly with the saïd *S. T.* her intended Husband, or for her alone and without the saïd *S. T.* notwithstanding her Coverture, and as if she were sole and unmarried, as often as she shall see Occasion, and at her own Will and Pleasure, by any Deed or Deeds, Writing or Writings, to be by her sealed and executed in the Presence of three or more credible Witnesses, or by her last Will and Testament duly made and publish'd, and which he the saïd *S. T.* as much as he may or can, doth hereby empower her to make, or by any Writing purporting her last Will and Testament sealed and executed as aforesaid, to limit and appoint any new or other Use or Uses, Estate or Estates, of, in and concerning the saïd Manors, Lands, Tene-

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ments,

ments, Hereditaments and Premisses above-mentioned, or of in and concerning any Part or Parts, Parcel or Parcels thereof, to any Person or Persons whatsoever, either in Fee-simple, Fee-tail, or for Life or Lives ; or for any Term or Number of Years, absolute or determinable upon the Death of any one or more Person or Persons ; and by the same Deed or Deeds, Writing or Writings, last Will and Testament, at the like Will and Pleasure of the said *E. A.* to charge the said Manors, Lands, &c. or any Part or Parcel thereof, with the Payment of any Sum or Sums of Money in Grofs, or with any Annual Sum or Sums of Money, to be paid at such Days and Times, and in such Manner and Form as the said *E. A.* shall in and by such Deed or Deeds, Writing or Writings, last Will and Testament, or Writing purporting her last Will and Testament, direct, limit or appoint ; with Power of Revoking all or any such Use or Uses, Charges, Estate or Estates, or any other the Appointments hereby reserved to be made, and of appointing any new Use or Uses, Estate or Estates, of and in the said Manors, Lands, Tenements, &c. or otherwise of charging the same, or any Part or Parcel thereof, after such Revocation made, with the Payment of any Annual Sum or Sums of Money as the said *E. A.* shall in her Discretion think fit. *Provided* always, that such Estate or Estates, Charges, Limitations or Appointments so to be made limited or appointed, be not made to commence 'till after the Death of the said *E. A.* or to prejudice the Estate and Term of 99 Years, determinable

terminable as aforesaid, hereby limited to the said *B. W. H. S.* and *W. E.* their Executors, Administrators and Assigns, any Thing herein contained to the contrary Notwithstanding. And as for, touching and concerning the said Term and Estate of 99 Years, limited to the said *B. W. H. S.* &c. their Executors, Administrators and Assigns, it is hereby covenanted and agreed, by and between all the said Parties to these Presents, and the true Intent and Meaning of them and every of them is, and is hereby declared to be, that the same is on the Trusts, and to the Intents and Purposes following, (that is to say) *Upon Trust*, in the first Place, that they the said *B. W. H. S.* and *W. E.* and the Survivors and Survivor of them, their Executors, Administrators and Assigns, shall yearly and every Year during the Joint Lives of them the said *S. T.* and *E. A.* out of the Rents, Issues and Profits of the said Manors, Lands, Tenements, Hereditaments and Premises hereby granted, raise any Sum or Sums not exceeding 1500*l.* a Year, over and above all Charges and Reprizes whatsoever, as the said *E. A.* notwithstanding her Coverture, shall by any Writing signed with her own Hand, in the Presence of three or more credible Witnesses direct and appoint, and pay the same yearly during the joint Lives of them the said *S. T.* and *E. A.* to the said *E. A.* or to such Use and Uses, and to such Person and Persons as she the said *E. A.* notwithstanding her Coverture, shall by any Writing executed as aforesaid, direct and appoint: And upon this further Trust, that they the said *B. W. H. S.* and  
*W. E.*



*W. E.* and the Survivors and Survivor of them, their Executors and Administrators, shall and will from Time to Time and at all Times hereafter, during the Continuance of the said Term of 99 Years, permit and suffer the said *S. T.* and his Assigns, yearly to receive and take all the Rest and Residue of the Rents, Issues and Profits of all and every the Premises aforesaid. *Provided always*, and it is hereby declared and agreed by and between all the said Parties to these Presents, that it shall and may be lawful to and for the said *E. A.* by and with the Consent of the said *S. T.* from Time to Time and at all Times during the joint Lives of them the said *S. T.* and *E. A.* by any Writing or Writings indented under both their Hands and Seals, attested by two or more credible Witnesses, to make any Lease or Leases, Demises or Grants, of all such Part and Parts of the said Mannors, Messuages, Lands, Hereditaments and Premises, as now are or have been anciently leased for one or more Life or Lives, or for any Term or Number of Years determinable upon one or more Life or Lives, to any Person or Persons for one, two, three or four Lives, or for any Term or Number of Years determinable on one, two, three or four Lives in Possession, Reversion or Remainder, or by way of future Interest; yet so as there shall never be above four Lives at any one Time in Being in any one Lease; and so as upon such Lease or Leases, Demises or Grants, there be reserved payable yearly, during the Continuance thereof, the ancient accustomed yearly Rent or Rents, Heriots, and other

ther Things usually paid for the same Premises, so to be leased or granted ; and so as such Leases be not made dispunishable of Waste, and in every such Lease or Leases there be contain'd a Condition of Re-entry on Nonpayment of the Rents, Heriots, and other Things, thereby reserved ; and so as the Lessee and Lessees, to whom such Lease and Leases shall be so made, do Seal and deliver Counterparts of such Lease and Leases ; and so as the Fine or Fines, Sum or Sums of Money, agreed to be paid by the Lessees for such Leases, be paid into the said *E. A.*'s own Hands, or to such Persons as she shall appoint by any Writing under her Hand, &c. any Thing in these Presents contained to the contrary notwithstanding. And it is hereby declared and agreed, by and between the said Parties to these Presents, and the said *S. T.* for himself, his Heirs, Executors and Administrators, doth Covenant and Agree to and with the said *B. W. H. S.* and *W. E.* their Executors, &c. that it shall be lawful for the said *E. A.* during the joint Lives of them the said *S. T.* and *E. A.* to take, have and receive to her own Use, notwithstanding her Coverture, and as if she were sole and unmarried, all such Sums of Money as shall be raised by any Fine or Fines, or any Lease or Leases, that shall at any Time or Times hereafter be made by Virtue of the said Power abovementioned, and to dispose thereof, and of every Part thereof, to such Person and Persons, and to such Uses, Intents and Purposes as she shall think fit, without the Hindrance, Disturbance or Controul of the said *S. T.* and

as if she were sole and unmarried; it being the true Intent and Meaning of all the said Parties to these Presents, and so hereby declared to be, that the said *E. A.* notwithstanding her Coverture, shall have the full, sole and absolute Disposal of all such Sum and Sums of Money, as shall be raised by leasing all or any Part of the said Premisses for Life or Lives as aforesaid. *In Witness,*  
&c.

*A Settlement of a Wife's Real and Personal Estate to her own separate Use, with a Covenant from the Husband to permit her to make a Will thereof, as she shall think fit.*

**T**HIS Indenture Tripartite, made, &c.  
Between *G. H.* of, &c. of the first Part,  
*M. B.* of, &c. of the second Part, and *J. L.*  
of, &c. and *R. T.* of, &c. of the third Part.  
Whereas *D. B.* late of, &c. in and by his last  
Will and Testament, bearing Date, &c. did  
Give, Devise and Bequeath unto the said  
*M. B.* all that his Freehold Messuage and  
Lands, lying and being in, &c. and to her  
Heirs and Assigns for ever; and also all his  
Leasehold Estate in, &c. for and during the  
Term of the Lease or Leases whereby he then  
held and enjoy'd the same; and he did there-  
by likewise give to the said *M. B.* divers Debts  
and Sums of Money, &c. as in and by the  
said recited Will proved in the Prerogative  
Court of, &c. more at large may appear:  
By Virtue of which said Will of the said  
*D. B.*

D. B. she the said M. B. is entitled unto, and seized and possessed of all and singular the Premisses abovementioned. *And whereas* a Marriage is intended to be shortly had and solemnized between the said G. H. and the said M. B. and it is agreed by and between the said G. H. and M. B. that if the said Marriage shall take Effect, then notwithstanding the said Marriage, he the said G. H. his Heirs, Executors, Administrators or Assigns, shall not, nor will intermeddle with, or have any Right, Title or Interest, either in Law or Equity, in or to any Part of the Rents, Issues, and Profits of the several Estates given and bequeathed to her the said M. B. in and by the said recited Will, as aforesaid; nor shall he the said G. H. his Executors, Administrators or Assigns, intermeddle with, or have any Right, Title or Interest, in or to any of the said Sums of Money, &c. or the Interest thereof; But the same shall be and remain to and for the sole and separate Use and Benefit of the said M. B. *Now this Indenture witnesseth*, That for the making the said Agreement good and effectual in the Law, and for the keeping and preserving the Rents of the several Estates, and the Interest of the said Money, &c. abovementioned, to and for the separate Use of her the said M. B. and so that the same shall not be in the Power or Disposal of the said G. H. or liable to the Payment of any of his Debts, or any Incumbrances; *He* the said G. H. doth for himself, his Heirs, Executors and Administrators, and for every of them, Covenant, Promise and Agree, to and with the said J. L. and R. T. and



and the Survivor of them, and the Executors and Administrators of the Survivor of them, by these Presents, that notwithstanding the said intended Marriage shall take Effect, all the Rents of the said Freehold and Leasehold Estates abovementioned, as shall from Time to Time become due and payable to her the said *M. B.* by virtue of the recited Will aforesaid; and also the Interest due, or to grow due for the said, &c. *Shall be* accounted, reckoned and taken as a separate and distinct Estate, of and from the Estate of him the said *G. H.* and no ways liable or subject to him, or to the Payment of any of his Debts; but shall, with the Profits or Increase that shall hereafter be gotten, gained or made of the same, be ordered, disposed, and employed to such Person and Persons, and to and for such Use and Uses, Intents and Purposes, and in such Manner and Form as is herein after mentioned and declared; (*that is to say*) that the ready Money arising or accruing out of the said separate and distinct Estate abovementioned, shall from Time to Time be placed out at Interest, on such Securities as she the said *M. B.* shall think fit; which Securities, during the Coverture, shall be taken and made in the Names of the said *J. L.* and *R. T.* or the Survivor of them, or in the Name or Names of such other Person or Persons as the said *M. B.* shall order, direct and appoint, in Trust for her the said *M. B.* And that all the said separate and distinct Estate before declared and allotted for the said *M. B.* and the Produce and Increase thereof, shall be had, taken, held, possessed and enjoyed

joyed, by such Person and Persons, and for such Use and Uses, as the said *M. B.* shall at any Time or Times hereafter, during her Life, Limit, Give, Devise, Order, Appoint or Dispose of the same, or any Part or Parts thereof, either by her last Will and Testament in Writing, or by any Writing purporting or intending to be her last Will and Testament, or by any other Writing to be signed with her Hand, subscribed in the Presence of two or more credible Witnesses. *And* the said *G. H.* doth for himself, his Heirs, Executors and Administrators, Covenant, Promise and Agree, to and with the said *J. L.* and *R. T. &c.* that if the said Marriage shall take Effect, that then he the said *G. H.* shall and will permit and suffer the said *M. B.* to Give, Grant, and dispose of the said separate Estate, as she shall think fit, in her Life-Time; and to make such Will, or other Writing as aforesaid, and thereby Give, Order, Devise, Limit and appoint her said separate Estate to any Person or Persons, for any Trust, Use, Intent, or Purpose whatsoever; and that he the said *G. H.* shall and will permit and suffer such Will hereafter to be made, to be duly proved by the Executors in such Will named or to be named, and *Probat* to be had and taken thereof, as is usual; and that the Person or Persons to whom the said *M. B.* shall give or dispose any Part of her said separate Estate by her Will, or any other Writing, that shall be signed, sealed and executed by her, in the Presence of two or more credible Witnesses as aforesaid, shall and lawfully may peaceably and quietly have,  
4 hold,

hold, occupy, possess and enjoy the same, according to the true Intent and Meaning of such Gift, Devise, or Appointment, without any Let, Suit, Trouble, Denial, Hindrance or Interruption, of or by the said *G. H.* his Executors, Administrators or Assigns, or any of them. *And also*, That it shall and may be lawful to and for the said *J. L.* and *R. T.* and the Survivor of them, and the Executors and Administrators of the Survivor, at any Time from and after the said intended Marriage shall take Effect, to commence any Action or Suit in Law or Equity, in the Name or Names of the said *G. H.* and *M. B.* his intended Wife, against any Person or Persons for the Recovery of any Sum or Sums of Money due or to grow due to the said *M. B.* on her said separate Estate as aforesaid; and that the said *G. H.* shall not, nor will Release or Discharge any such Action or Suit, nor Receive, Release or Discharge any Sum or Sums of Money now due, or hereafter to grow due or owing to the said *M. B.* on Account of her said separate Estate, without the special Licence and Consent of them the said *J. L.* and *R. T.* or the Survivor of them, or the Executors or Administrators of the Survivor of them, in that Behalf first had and obtained in Writing, under their or some of their Hands and Seals: But that he the said *G. H.* shall and will avow, justify and maintain all lawful Actions and Suits that shall be so commenced for Recovery of the Premises; and also that he the said *G. H.* shall and will as often as thereto desired by the said *J. L.* and *R. T.* or the Survivor of

of them, &c. join with the said *M.* his intended Wife in any Receipt, Release, Discharge or Assignment necessary to be given and made on receiving in any of the Monies due or to grow due to the said *M.* as aforesaid; or in the Transferring of, &c. aforesaid. *And further*, that he the said *G. H.* shall and will from Time to Time, and at all Times, from and after the said Marriage shall take Effect, upon every reasonable Request, and at the proper Costs and Charges of the said *J. L.* and *R. T.* or the Survivor of them, or the Executors or Administrators of the Survivor of them, make, do and execute all and every such further Act and Acts, Thing and Things, for the better settling, recovering and receiving the Money, Goods and Estate of the said *M. B.* allotted and declared to be for her separate Use, Benefit and Disposal, as aforesaid, as by the said *J. L.* and *R. T.* or the Survivor of them, or the Executors, &c. or their or any of their Counsel learned in the Law shall be reasonably devised, advised or required: And that he the said *G. H.* his Executors or Administrators, shall not nor will, at any Time or Times hereafter, do, commit or suffer, or cause to be done, committed or suffered, any Act, Matter, or Thing whatsoever, whereby or where-with, or by Reason or Means whereof, the said *M.* shall or may be any ways frustrated or hindred in the having, holding and enjoying her said Estate for her own separate Use, or in the giving or disposing of the same, according to the true Meaning of these Presents: *Provided always*, and it is declared, concluded

R

and



and agreed, by and between all the said Parties to these Presents, and it is the true Intent and Meaning hereof, and of the said Parties hereunto, that they the said J. L. and R. T. and the Survivor of them, &c. shall and may from Time to Time reimburse, satisfy and pay themselves out of the said Estate, all such necessary and reasonable Charges as they shall sustain or be put unto, by reason of their being made Parties to these Presents, and transacting any Trust or other Thing pursuant thereto; and that neither of them the said J. L. and R. T. shall be any ways accountable for the Act of the other, or liable to make good any more of the said Estate than what shall really and *bona fide* come to his Hands or Custody. *Provided also*, and it is declared, concluded and agreed, &c. that the said G. H. his Executors and Administrators, shall from Time to Time and at all Times hereafter, be indemnified and saved harmless out of the separate Estate of the said M. B. of and from all manner of Costs, Charges, Damages or Trouble, that he or they shall or may sustain, incur or be put unto, for or by Reason or Means of his the said G. H.'s joining or being made a Party in any Action or Suit for recovering any Part of the separate Estate of the said M. or joining or being made a Party in any Receipt, Release or Assignment, to be made and given upon receiving any Part of the separate Estate of her the said M. B. as aforesaid; or on any other Account whatsoever relating to the said separate Estate. *In Witness, &c.*

*Marriage Articles* to place the Wife's Fortune out at Interest, in Nature of a Settlement; and Covenant for the Husband to lay out 1000 l. on a Purchase, and settle the Lands on his Wife, &c.

Articles of Agreement *Tripartite*, indented, made, concluded and agreed upon, this Day and Year, &c. Between T. N. of, &c. of the first Part, G. M. of, &c. of the second Part, and L. W. of, &c. and A. W. of, &c. of the third Part.

**I***Mprimis*, Whereas there is a Marriage intended (by God's Permission) shortly to be had and solemnized between the said T. N. and A. M. Spinster, Daughter of the said G. M. with whom he the said T. N. is to have and receive the Sum of 1000 l. as and for a Marriage Portion: But forasmuch as the said T. N. is not as yet seized or possessed of any real Estate, whereby to make the said A. M. a competent Jointure and Settlement, equivalent to her Fortune; it is therefore covenanted, agreed and declared, by and between the said Parties to these Presents, in Manner and Form following, (*viz.*)

*First*, The said G. M. for himself, his Executors and Administrators, doth Covenant, Promise and Agree, to and with the said T. N. his Executors and Administrators, that he the said G. M. his Executors or Administrators, shall and will within three Months after the

Solemnization of the said intended Marriage between the said *T.* and *A. M.* pay and deposite into the Hands of the said *L. W.* and *A. W.* the Sum of 1000 *l.* being the full Portion agreed to be given in Marriage with her the said *A.* Which said Sum of 1000 *l.* is hereby agreed by and between the said Parties to these Presents, shall from Time to Time be put out at Interest on the best Security or Securities that can be gotten and procured therefore, in the Name of the said *L. W.* and *A. W.* by and with the Consent and Approbation of the said *T. N.* and the Interest thereof shall from Time to Time be paid to and received by the said *T. N.* during his Life; and after his Death, by the said *A.* his intended Wife during her Life; and after the Deceases of them the said *T. N.* and *A.* then the said Sum of 1000 *l.* shall be paid to and amongst such Child or Children of the said *A.* by the said *T. N.* her intended Husband to be begotten, by such Proportions, and in such Manner as they the said *T. N.* and *A.* his intended Wife, or the Survivor of them, shall by any Deed or Deeds, Writing or Writings, by them or the Survivor, to be sealed and executed in the Presence of two or more credible Witnesses, direct and appoint; and for Default of such Direction and Appointment, then to be equally divided amongst all and every such Child or Children, share and share alike. *And* if there shall happen to be no such Child or Children of the said *A.* by the said *T. N.* to be begotten, then the Sum of 500 *l.* Part of the said Sum of 1000 *l.* shall and ought to be paid to the said *G. M.* his Executors

ecutors and Administrators, and the remaining 500*l.* to the said *T. N.* his Executors and Administrators.

*Provided* always, and it is hereby further agreed and declared by and between the said Parties to these Presents, that in Case the said *T. N.* shall at any Time, during his Life, be minded and desirous to call in the said 1000*l.* or any Part thereof, and invest the same in his Trade, or to lay out the same in a Purchase of any Lands, Tenements or Hereditaments, and shall procure the Consent of the said *A.* his intended Wife and of the said *G. M.* for so doing, to be declared in Writing under Hand and Seal, &c. that then and in such Case it shall and may be lawful to and for the said *G. M. L. W.* and *A. W.* and the Survivor of them, and the Executors and Administrators of such Survivor, to call in the said 1000*l.* and to pay the same to the said *T. N.* who may either invest the same in the Trade which he the said *T. N.* now useth, or Lay out the said Money in the Purchase of any Lands, Tenements or Hereditaments, to be settled on the said *A.* and the Issue of her Body, by the said *T. N.* to be begotten, as by the Purport of such Writing, so to be sealed and executed as aforesaid, shall be declared, agreed and directed, concerning the same.

*Item,* It is further covenanted, agreed and declared, by and between the said Parties to these Presents, that the said *L. W.* and *A. W.* their Executors or Administrators, shall not be chargeable with, or liable to make good any bad Debt or Debts that shall or may



happen by any insufficient Security or Securities; and that each of them shall be accountable for no more than what shall actually come to each of their Hands respectively, and not for the Receipts of each other. And that it shall and may be lawful to and for the said *L. W.* and *A. W.* their Executors and Administrators, to have, take and receive out of the said 1000*l.* and the Interest and Profits thereof, sufficient Money to reimburse themselves all Costs, Damages and Expences, which they, or either of them shall expend, sustain, or be put unto, in relation to the Trust hereby in them reposed.

*Item,* The said *T. N.* in Consideration of the said intended Marriage and Marriage-Portion, doth for himself, his Heirs, Executors and Administrators, covenant and grant, to and with the said *G. M.* his Heirs, Executors and Administrators, that he the said *T. N.* (in Case the said intended Marriage shall take Effect) shall and will, with the Approbation of the said *G. M.* and the said *L. W.* and *A. W.* or the Survivor of them, lay out the Sum of, *£*3*c.* in a Purchase of Lands and Tenements in Fee-simple, in the County of, *£*3*c.* and settle the same, as the Counsel of the said *G. M.* and the said Trustees, or the Survivor of them shall direct and advise, in such Manner as the same may be held and enjoyed by the said *T. N.* and his Assigns, for and during the Term of his natural Life, without Impeachment of Waste; and after his Decease, by the said *A.* his intended Wife, and her Assigns, for and during the Term of her natural Life; and after

after both their Deceases, by the Issues of their Bodies, between them to be begotten, by such Proportions, and in such Manner and Form as they the said *T. N.* and *A.* his intended Wife, or the Survivor of them, by any Deed or Deeds, Writing or Writings, by them or the Survivor of them, to be sealed and executed in the Presence of two or more credible Witnesses, shall direct, limit or appoint; and in Default of making such Appointment, then by the Heirs of the said *A.* by the said *T. N.* to be begotten, in such Manner as it shall not be in the Power of the said *T. N.* to defeat such Issue of the same; and in Default of such Issue, then by the Right Heirs of the said *T. N.* for ever. *In witness, &c.*

*Articles of Marriage* for settling a Wife's Estate, and paying the Wife a Sum of Money, in Lieu of a Jointure.

*Articles of Agreement Tripartite, indented, made, &c. Between W. E. of, &c. of the first Part, J. D. Spinster, Daughter of, &c. of the second Part, and A. L. of, &c. and B. M. of, &c. of the third Part, as followeth, viz.*

**W**Hereas the said J. D. by Virtue of the Will of, &c. or otherwise, is seised to her and her Heirs in Fee-simple, of and in certain Messuages or Tenements, with the Appurtenances, situate, lying and being in, &c. And whereas the said J. is also possessed or interested for the Remainder of a Term of ninety-nine Years, if, &c. or either of them shall so long live, of and in all that Messuage or Tenement, with the Appurtenances, situate in, &c. by Virtue of one Indenture of Lease thereof granted to the said J. D. by, &c. And whereas a Marriage is intended (by GOD's Grace) shortly to be had and solemnized between the said W. E. and J. D. with whom the said W. E. is to have and receive 500*l.* in Money, over and besides the Houses above-mentioned, as and for her Marriage-Portion: It is therefore covenanted and agreed, by and between the said Parties to these Presents, in Manner following, (that is to say).

*Inprimis,*

*Imprimis*, The said *W. E.* for himself, his Heirs and Assigns, doth covenant and grant, to and with the said *A. L.* and *B. M.* their Heirs and Assigns, That they the said *W. E.* and *J.* his intended Wife, in Case the said Marriage shall take Effect, shall and will within six Months after the said Marriage shall be had and solemnized, by Fine and other good and sufficient Conveyances in the Law, settle and assure all such Messuages and Tenements whereof she the said *J. D.* is seised as aforesaid, with the Appurtenances, to the Use and Behoof of the said *W. E.* and his Assigns, during the Term of his natural Life; and from and after the Determination of that Estate, then to the Use and Behoof of the said *A. L.* and *B. M.* their Heirs and Assigns, during the natural Life of the said *W. E.* in Trust to preserve and support the contingent Remainders herein after limited: And from and after the Decease of the said *W. E.* then to the Use and Behoof of the said *J.* his intended Wife, for and during the Term of her natural Life; and from and after her Decease, then to the Use and Behoof of the Heirs of the Body of the said *J.* by the said *W. E.* lawfully to be begotten; and for Default of such Issue, then to the Use and Behoof of the said *J.* her Heirs and Assigns for ever, and to and for none other Use, Intent or Purpose whatsoever.

*Item*, The said *W. E.* doth for himself, his Heirs, Executors, Administrators and Assigns, further covenant and grant, to and with the said *A. L.* and *B. M.* their Heirs, Executors, &c. that he the said *W. E.* and  
the



the said *J.* his intended Wife, shall and will, by like good and sufficient Conveyances in the Law, settle and assure the said Messuage or Tenement, with the Appurtenances above-mentioned, to be situate in, &c. in the Possession of, &c. in such Manner as that the same may be held and enjoyed, and the Rents and Profits thereof may be had, received and taken by the said *W. E.* and his Assigns, during so many Years of the said Term as he shall happen to live; and from and after his Decease, then by the said *J.* his intended Wife, and her Assigns, for and during so many Years of the said Term, as she shall happen to live; and from and after her Decease, then by such Children of the said *J.* by the said *W. E.* lawfully to be begotten, and so as it may not be in the Power of the said *W. E.* to defeat such their Issue; and for Default of such Issue, then by the Executors and Administrators of the said *J.* during the Residue of the Term, and upon none other Trust, and to or for none other Intent or Purpose whatsoever.

*Item,* Forasmuch as the said *W. E.* is not at present seised of an Estate sufficient to make a Jointure for the said *J.* his intended Wife, the said *W. E.* doth for himself, his Heirs and Assigns, covenant and grant, to and with the said *A. L.* and *B. M.* their Heirs, &c. that in Case the said intended Marriage shall take Effect, and he the said *W. E.* shall happen to die in the Life-time of the said *J.* that then he the said *W. E.* shall and will, by his Last Will and Testament, or otherwise, give and assure unto the said *J. D.* the Sum  
of

of 500 l. or the full Value thereof in Lands, Tenements, Goods or Chattels, to be at her own Disposal, and to be by her received and taken to her own proper Use and Benefit. *In witness, &c.*

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A *Bond on Marriage*, with Condition to leave the Wife and Children so much Money, at the Husband's Death; and if the Wife dies in a Year, to refund Part of the Portion.

**N**Overint universi per presentes me S. J. de  
 &c. teneri & firmiter obligari E. F. de,  
 &c. G. H. de, &c. & J. L. de, &c. in Ostin-  
 gentis Libris bone & leg'lis monete Magn' Bri-  
 tannie solvend' eisd'm E. F. G. H. & J. L.  
 vel alicui eorum aut suo certo Attornat' Executo-  
 rib' Administratorib' vel Assignat' suis, ad quam  
 quidem solutionem bene & fideliter faciend' ob-  
 ligo me heredes Executors & Administratores  
 meos firmiter per presentes, sigillo meo sigillat'  
 Dat' Primo die Julii Anno Regni Dom' Georgii  
 Dei Gra' Magn' Britan' Franc' & Hibern' Re-  
 gis Fidei Defensor', &c. quinto Annoq; D'ni,  
 1731.

THE Condition of this Obligation is such,  
 That whereas a Marriage is intended (by  
 GOD's Permission) shortly to be had and  
 solemnised between the above bound S. J.  
 and C. F. Daughter of the above-named E. F.  
 with whom the said S. J. is to receive, as a  
 Marriage

Marriage Portion, the Sum of 400*l.* in Money, or the Value thereof in Goods or other Effects; and in Consideration of the said Marriage and Marriage Portion, he the said *S. J.* hath agreed to leave to the said *C.* and her Children, to be by him begotten, the Sum of 400*l.* to be paid and applied in Manner herein after mentioned. *If therefore* the said Marriage shall take Effect, and the said *S. J.* shall die in the Life-time of the said *C.* then if the Heirs, Executors or Administrators of him the said *S. J.* do and shall, within six Months next after his Death, pay or cause to be paid, into the Hands of the said *E. F. G. H.* and *J. L.* the Sum of 400*l.* to be by them applied upon the Trusts, and to and for the Ends and Purposes following, (that is to say) That in Case the said *S. J.* shall leave any Child or Children of his Body, on the Body of the said *C.* begotten, which shall live to be married, or attain the Age of Twenty-one Years respectively, the said Trustees and the Survivors and Survivor of them, shall pay the said 400*l.* to the said *C.* and such Child or Children, equally between them, Share and Share alike: And in the mean Time, until such Child or Children shall be married, or attain their said Age of Twenty-one Years respectively, the said Trustees shall pay the Interest of the said 400*l.* to the said *C.* towards the Support and Maintenance of the said *C.* and such Child or Children. And in Case the said *S. J.* shall leave no Issue of his Body, on the Body of the said *C.* begotten, or leaving Issue, and such Issue shall all die before Marriage,

or

or the Age of Twenty-one Years, then the said whole Sum of 400*l.* shall and ought to be paid to the said C. her Executors and Administrators. *But* in Case the said C. shall happen to die in the Life-time of the said S. *J.* having a Child or Children of his Body, on the Body of the said C. begotten; then if the said S. *J.* his Heirs, Executors or Administrators, do and shall forthwith pay, or cause to be paid to the said E. F. G. H. and *J. L.* for the Use of the said Child or Children, the Part, Share and Portion of such Child or Children, of and in the said 400*l.* so appointed above for the said C. and her Children, in Case she survived the said S. upon an equal Division to be made thereof by the said Trustees, between the said S. and such Child or Children, Share and Share alike; and then the said Trustees shall pay such Shares and Proportions to such Child or Children on their Marriage or Age of Twenty-one Years, which shall first happen; and in the mean Time shall pay the Interest thereof to the said S. *J.* towards the Support and Maintenance of such Child or Children, &c. *And* in Case the said C. shall die within the Space of one Year, from the Day of her Marriage with the said S. *J.* leaving no Child of his Body, on the Body of her the said C. begotten; then if the said S. *J.* his Heirs, Executors or Administrators, do and shall within six Months next after the Death of the said C. refund and pay back, or cause to be refunded and paid back, unto the said E. F. his Executors or Administrators, to and for his own proper Use and Benefit, the Sum  
of



of 200*l.* being one Moiety of the Marriage-Portion given with the said C. that then, &c. or else, &c.

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*A Bond for the separate Maintenance of a Wife.*

*J. B. & T. W. teneri, &c. R. T. in centum libris, &c.*

**W***Hereas* several Differences have arisen between the above bound *J. B.* and *E. B.* his Wife, whereupon the said *E. B.* hath for the Space of, &c. lived separate and apart from the said *J. B.* and he hath not hitherto given or made any Allowance for her Maintenance: *And whereas* the said *J. B.* hath now agreed to pay, towards the Maintenance of the said *E. B.* the weekly Sum of seven Shillings, which the said *E. B.* is contented and willing to take and accept, in full Satisfaction of what she can or may claim or demand of him the said *J. B.* for Maintenance, as aforesaid. *Now the Condition* of this Obligation is such, That if the said *J. B.* do and shall pay, or cause to be paid unto the said *E. B.* on *Saturday* in every Week, during the Life of him the said *J. B.* the Sum of seven Shillings of lawful Money of *Great Britain*, without any Fraud or Delay, for the separate Maintenance of her the said *E. B.* according to the true Intent and Meaning of the Agreement above-mentioned, Then, &c.

*The*

*The Condition of a Bond from a Woman divorced, that she shall not claim Dower or Maintenance, &c.*

**T**HE Condition of this Obligation is such, That *whereas* great Strife and Variance hath been stirred up between the above-named *W. A.* and the above bound *M. D.* concerning a supposed Marriage had between them: *And whereas* the said Variance, by legal Sentence given, by and before the Right Reverend Father in God *B. Lord Bishop of, &c.* is now decided, and the said *W. A.* and *M. D.* are divorced. *And whereqs* the said *W. A.* in Consideration of the said Divorcement, hath entered into Bond to, *&c.* for the Use of the said *M. D.* for the Payment of the Sum of, *&c.* at and upon, *&c.* And the said *M. D.* hath sealed and delivered unto the said *W. A.* a general Release of all Debts, Duties, Dowers, Jointures, Rights, Claims and Demands, which she hath, may, might, or ought to have, claim or demand, of, by or from the said *W. A.* or by the Death of him the said *W. A.* as by the said Release may appear. *If therefore* the said *M. D.* or any other Person or Persons for her, or by her Consent, Act, Means or Procurement, do not molest, sue, implead, or cause to be molested, sued or impleaded, or otherwise troubled or put to Charges, the said *W. A.* his Heirs, Executors or Administrators, at any Time or Times hereafter, for any Maintenance, Jointure, Dower, Meat,

Meat, Drink or Cloaths, nor for any Lands; Tenements, Hereditaments, Goods or Chattels of the said *W. A.* whereof the said *W. A.* now is, or at any Time hereafter shall be seised or possessed, or any other Person or Persons, to the Use of the said *W. A.* or any Part or Parcel thereof; nor for any other Cause, Contract or Demand whatsoever, from the Beginning of the World to the Day of the Date hereof: *And also*, if the said *M. D.* from Time to Time, and at all Times hereafter, do and shall, upon the reasonable Request, and at the Costs and Charges in the Law of the said *W. A.* his Heirs or Assigns, make, seal and execute unto the said *W. A.* his Heirs and Assigns, all and every further lawful and reasonable Act and Acts, Deed and Deeds, Device and Devices whatsoever, for the full Dissolution of all Contracts of Marriage; and for the Discharge of the said *W. A.* his Heirs, Executors and Administrators, of and from all other Claims, Titles, Debts, Duties and Demands whatsoever, by her the said *M. D.* or any other Person or Persons by her Appointment, Means or Procurement; at any Time hereafter to be asked, challenged, claimed or demanded of the said *W. A.* his Heirs, Executors, Administrators or Assigns, by Reason of her being Wife to the said *W. A.* or to him contracted, or for any other Cause, Matter or Thing whatsoever, from the Beginning of the World until the Day of the Date of these Presents; and from all Dowers and Title of Dower and Jointure on the Death of the said *W. A.* as by the said *W. A.* his Heirs, Executors or Assigns,  
or

or his or their Counsel learned in the Law, shall be reasonably devised, advised or required; Then, &c.

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*An Assignment of Dower to a Widow, by the Heir of her Husband.*

**T**HIS Indenture made, &c. Between T. M. of, &c. Son and Heir of L. M. late of, &c. Esq; of the one Part, and D. M. Widow and Relict of the said L. M. of the other Part. *Whereas* the said L. M. in his Life-time, and at the Time of his Death, was seised in his Demesne, as of Fee, of and in all those Messuages, Lands and Tenements in, &c. which upon the Decease of the said L. M. descended to the said T. M. *And whereas* the said D. M. hath required of the said T. M. her Dower or Thirds, of and in the Messuages, Tenements, Lands and Premises aforesaid, and of and in all the Estate whereof the said L. M. died seised or possessed: *Now this Indenture witnesseth*, That the said T. M. Hath assigned and appointed, and by these Presents doth assign, &c. unto the said D. M. the Third Part of all the said Lands, Tenements and Hereditaments, (*viz.*) All that Messuage or Tenement, situate, lying and being in, &c. *To have and to hold* the said Messuage or Tenement, and Premises, with the Appurtenances, unto the said D. M. for and during her natural Life, in the Name of Dower, and in full Satisfaction of all



Dower and Thirds which she the said *D. M.* ought to have, or can or may claim, of, or in any Messuages, Lands, Tenements or Hereditaments, which were at any Time belonging or appertaining to the said *L. M.* And the said *T. M.* for himself, his Heirs and Assigns, doth covenant and grant, to and with the said *D. M.* her, &c. That she the said *D. M.* shall and may, from Time to Time, and at all Times during her natural Life, peaceably and quietly hold and enjoy the said Messuage or Tenement, and Premises above-mentioned, to be assigned in Dower, without any Molestation, Hindrance or Interruption, of or by the said *T. M.* his Heirs or Assigns; and that free from all former and other Grants and Incumbrances, &c. And that he the said *T. M.* his Heirs and Assigns, shall and will do any further and other Acts for the further Assuring of the said Messuage or Tenement, &c. above-mentioned, to the said *D. M.* for and during her natural Life, as by the said *D. M.* or her Counsel, shall be advised and required. *In witness, &c.*

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*A Release of a Woman's Dower.*

**T**O all People to whom these Presents shall come, *A. W.* Widow and Relict of *W. W.* late of, &c. deceased, sendeth greeting. Know ye, That the said *A. W.* for and in Consideration of the Sum of, &c. to her in Hand paid by *L. W.* of, &c. Son of the said *W. W.* Hath remised, released, and for  
ever

ever quit-claimed, and by these Presents doth fully, freely and absolutely remise, release, and for ever quit-claim, unto the said *L. W.* all and all Manner of Dower, and Right and Title of Dower whatsoever, which she the said *A. W.* now hath, may, might, should, or ought to have or claim, of, in or out of all and every the Messuages, Lands, Tenements and Hereditaments whatsoever, which were the said *W. W.*'s, her late Husband, at any Time during the Coverture between him and the said *A. W.* situate and being in the County of, &c. and also all Manner of Actions and Writs of Dower whatsoever; so as neither she the said *A. W.* nor any other Person or Persons for her, or in her Name, any Dower or Writ or Action of Dower, or any Manner of Right or Title of Dower, of or in the said Messuages, Lands, Tenements and Hereditaments, or of or in any Part or Parcel thereof, at any Time hereafter shall or may have, claim or prosecute against the said *L. W.* his Heirs or Assigns, but of and from the same shall be utterly debarred, and for ever excluded by these Presents. *In Witness, &c.*

*A Lease from Husband and Wife, of the Wife's Land, according to the Statute.*

**T**HIS Indenture made, &c. Between *A. B.* of, &c. and *C.* his Wife, of the one Part, and *E. F.* of, &c. of the other Part. *Whereas* the said *A. B.* is seised in Right of the said *C.* his Wife, of and in all that Messuage or Tenement and Lands, situate, &c. held in Fee-tail to her the said *C.* and the Heirs of her Body, &c. by Virtue of a Deed of Gift and Grant thereof made by *T. H.* bearing Date, &c. as thereby may appear. *Now this Indenture witnesseth*, that the said *A. B.* and *C.* his Wife, in Consideration of the Surrender of a former Lease, granted unto the said *E. F.* of the Messuage or Tenement and Premises aforesaid, and herein after demised, for the Term of, &c. as also for and in Consideration of the Sum of, &c. of lawful *British* Money to them the said *A. B.* and *C.* his Wife, in Hand paid by the said *E. F.* at and before the Sealing and Delivery of these Presents, the Receipt whereof they the said *A. B.* and *C.* do hereby acknowledge, and thereof do acquit and discharge the said *E. F.* his Executors, Administrators and Assigns, by these Presents, *Have* demised, granted and to Farm letten, and by these Presents do demise, grant, &c. unto the said *E. F.* *All* that Messuage or Tenement, with all those Lands, &c. situate and lying in, &c. above-mentioned, and all Houses, Outhouses, Ways, Waters, Ease-  
ments

ments and Appurtenances to the said Messuage or Tenement, Lands and Premisses belonging, or any Ways appertaining; which said Messuage, or Tenement and Premisses, have been commonly let to Farm, by the Space of twenty Years and more last past. *To have and to hold* the said Messuage or Tenement, Lands and Premisses above granted and demised, and every Part and Parcel thereof, with the Appurtenances, unto the said *E. F.* his Executors, Administrators and Assigns, from the Day of the Date of these Presents, for and during, and unto the full End and Term of twenty-one Years, from thence next ensuing, and fully to be compleat and ended: *Yielding and paying* therefore yearly, and every Year, during the said Term, unto the said *A. B.* and *C.* his Wife, and the Heirs of the said *C.* the ancient and accustomed Rent of, &c. at and upon the Feast-Days of, &c. by even and equal Portions: *And* if it shall happen the said yearly Rent of, &c. or any Part thereof, shall be behind and unpaid, by the Space of eight and twenty Days next after either of the said Feasts or Days of Payment, on which the same ought to be paid as aforesaid (being lawfully demanded) and no sufficient Distress or Distresses, in or upon the said Premisses, can or may be found, whereby the same may be levied, that then, and from thenceforth it shall and may be lawful, to and for the said *A. B.* *C.* his Wife, and the Heirs of the said *C.* into the said Messuage or Tenement, Lands and Premisses hereby demised, with the Appurtenances, to re-enter, and the same to



have again, repofsefs and enjoy, as in his, her or their former Right and Estate, any thing herein contained to the contrary notwithstanding. *And* the said *E. F.* for himself, his Executors, Administrators and Assigns, doth covenant and grant, to and with the said *A. B.* &c. that he the said *E. F.* his Executors, Administrators and Assigns, shall and will, during the said Term hereby granted, well and truly pay, or cause to be paid, unto the said *A. B.* and *C.* his Wife, and the Heirs of the said *C.* the said yearly Rent of, &c. above reserved, at the Days and Times, and in Manner and Form above expressed, according to the true Intent and Meaning of these Presents. *And also* that he the said *E. F.* his Executors, Administrators and Assigns, at his and their own proper Costs and Charges, shall and will from Time to Time, and at all Times, during the said Term hereby granted, well and sufficiently repair, maintain, sustain, uphold, amend, hedge, ditch, cleanse and keep the said Messuage or Tenement, Lands and Premises hereby demised, and every Part and Parcel thereof, with the Appurtenances, in and with all needful and necessary Reparations and Amendments whatsoever, when, and as often as need shall require; and the same so well and sufficiently repaired, maintained, sustained, &c. at the End of the said Term, or other sooner Determination of this present Demise, unto the said *A. B.* *C.* his Wife, or the Heirs of the said *C.* shall and will peaceably and quietly leave and yield up. *And* the said *A. B.* for himself, the said *C.* his Wife, and the Heirs of  
of

of the said C. doth covenant and grant, to and with the said E. F. his Executors, Administrators and Assigns, by these Presents, that he the said E. F. his Executors, &c. paying the said yearly Rent of, &c. above reserved in Manner aforesaid, and performing the Covenants and Agreements herein before contained, which on his or their Parts and Behalfe, are or ought to be paid, done and performed, shall and may peaceably and quietly have, hold, occupy, possess and enjoy the said Messuage or Tenement, Lands and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, for and during the said Term hereby granted, without any Interruption or Denial of the said A. B. C. his Wife, or the Heirs of the said C. or of any other Person or Persons whatsoever, lawfully claiming, or to claim any Right, Title or Interest, from, by or under him, her, them, or either, or any of them. *In witness, &c.*

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*A Will and Appointment by a Wife, of Legacies to be paid after her Death, pursuant to a Power given by Marriage Articles.*

**I**N the Name of GOD, Amen. I M. T. Wife of B. T. of, &c. by Virtue of a Power to me given and reserved in and by the Marriage Articles or Settlement entered into and made between me and my Trustees J. L. and G. M. of, &c. and the said B. T. bearing Date, &c. do this Day, &c. in the Year of

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our

our Lord, &c. make and publish this my Last Will and Testament, in Manner following, (that is to say) *Imprimis*, I give and bequeath, and hereby appoint to be paid to my dear Brother *L. B.* the Sum of 200*l.* to me due from, &c. by one Bond or Obligation by him given, for Payment thereof to my said Trustees, the said *J. L. G. M. &c.* for my Use, at and upon, &c. last past. *Item*, I give to my loving Sister *A. B.* the Sum of 100*l.* which lies in a Bag, sealed up in the middle Drawer of the Scrutore, in my Clofet; and also my Gold Watch, and best Suit of wearing Apparel. *Item*, I give and appoint to my Cousins *T. B. E. B.* and *C. B. &c.* the Sum of 10*l.* a-piece, to buy them Mourning; to be paid out of my separate Estate, which I shall leave behind me at my Death. *Item*, I give to my Servant Maid *E. W.* the Sum of 5*l.* and all my Clothes, except my best Suit of wearing Apparel, above bequeathed to my Sister *A. B.* *Item*, All the Rest and Residue of my Goods and Chattels, and separate Estate whatsoever, whereof I shall die possessed or entitled unto, I give to the said *J. L.* and *G. M. &c.* whom I make, constitute and ordain Executors and Overseers of this my Will, to take Care and see the same performed, according to my true Intent and Meaning. *In witness* whereof, I the said *M. T.* have to this my Last Will and Testament, or Appointment for the Disposition of my Estate, set my Hand and Seal the Day and Year above-written.



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